

EXHIBIT F - Feuerstein Dep

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

5 JOANNE HART and AMANDA PARKE, on behalf
6 of themselves and all others similarly
7 situated.

8 Plaintiffs,

... v_s

10 : BHH, LLC d/b/a Bell + Howell and VAN
11 : HAUSER LLC,

12 Defendants.

16 Videotaped Deposition of DEBBIE FEUERSTEIN,
17 taken at 888 Seventh Avenue, New York, New
18 York, commencing at 10:38 a.m., Tuesday,
19 November 29, 2016, before Jamie Ann Stanton,
20 a Shorthand Reporter and Notary Public of
21 the State of New York.

24 | JOB No. 2490905

25 PAGES 1 - 223

1 APPEARANCES:		1 EXHIBITS		
2		2 PLAINTIFFS		
3	Attorneys for Plaintiffs	3 EXHIBIT		
4		DESCRIPTION		PAGE
5	BURSOR & FISHER, P.A.	5 Exhibit 14	copy of Debbie Feuerstein	
6	BY: YITZCHAK KOPEL, ESQ.	6	FaceBook profile page	42
7	888 Seventh Avenue	7	Exhibit 15 BIII, LLC 006640-006666	52
8	New York, New York 10019	8	Exhibit 16 US Design Patent Application	86
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14	BY: SCOTT WING, ESQ.	14	Exhibit 22 BHH, LLC 001810-001815	172
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19	ALSO PRESENT:	19		
20	Kevin Gallagher, Videographer	20		
21		21		
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25		25		

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1 LITIGATION SUPPORT INDEX		1 THE VIDEOGRAPHER: We are now		
2		2 going on the record at, approximately,		
3	WITNESS	EXAMINATION BY	PAGE	3 10:57 a.m. This is the beginning of
4	D. Feuerstein	Mr. Kopel	6	4 file number one. My name is Kevin
5				5 Gallagher representing Veritext, New
6				6 York. The date today is November 29,
7	DIRECTION TO WITNESS NOT TO ANSWER			7 2016. The deposition is being held at
8	Page	Line	Page	8 burrs operating room and Fisher
9	92	6		9 located at 888 Seventh Avenue, in New
10				10 York, New York. The caption of this
11				11 case is Joanne Hart, et al., versus
12	REQUEST FOR PRODUCTION OF DOCUMENTS			12 Bell + Howell, et al. The case is
13	Page	Line	Page	13 filed in the US District Court for the
14	161	6		14 Southern District of New York. The
15				15 case number is 15-CV 04804. The name
16				16 of our witness this morning is Debbie
17				17 Fuerstein.
18				18 At this time the attorneys
19				19 present in the room will identify
20				20 themselves for the record.
21				21 MR. KOPEL: Yitzchak Kopel on
22				22 behalf of Plaintiff, Joanne Hart.
23				23 MR. WING: Scott Wing on
24				24 behalf of Defendants.
25				25 THE VIDEOGRAPHER: Our court

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2 (Pages 2 - 5)

D. Feuerstein

1 reporter this morning is Jamie
 2 Stanton. She represents Veritext
 3 Reporting as well. She will now swear
 4 in the witness and we can proceed.

5 REPORTER: Please raise your
 6 right hand. Do you swear or affirm
 7 that the testimony you are about to
 8 give will be the truth, the whole
 9 truth, and nothing but the truth?

10 THE WITNESS: Yes.

11 EXAMINATION

12 BY MR. KOPEL:

13 Q. Good morning, Ms. Feuerstein.

14 A. How are you?

15 Q. Well. Can you state your name
 16 and address for the record?

17 A. Yes. Debbie Feuerstein. My
 18 current address is 1162 North Avenue, New
 19 Rochelle, New York 10804.

20 Q. And is that your home address?

21 A. Yes.

22 Q. Is that your business address,
 23 as well?

24 A. No. My office is in Flushing,
 25 Queens.

1 was -- happened -- happened in Hong Kong.

2 Q. Can you please briefly describe
 3 what that case was about?

4 A. It's just my customer did not
 5 pay us, so we were suing him for the money
 6 he owed.

7 Q. Is that still pending?

8 A. No. We actually lost the case,
 9 and then we settled in 2006.

10 Q. Thank you.

11 Before we continue, I would like
 12 to discuss the ground rules today.

13 Do you understand that you are
 14 testifying under oath today?

15 A. Yes.

16 Q. Do you understand that you have
 17 the same obligation to tell the truth
 18 today as you would in the courtroom before
 19 a judge and a jury?

20 A. Yes.

21 Q. It's important that we
 22 communicate clearly today. I am going to
 23 ask you a lot of questions about the case.
 24 If you don't understand a question, please
 25 let me know, and I will try to clarify it

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1 Q. What is the address of your
 2 office?

3 A. 43-35, 5G, Queens Avenue,
 4 Flushing, New York, 11355.

5 Q. Thank you, my name is Yitzchak
 6 Kopel. I am a lawyer. I represent
 7 Plaintiff Joanne Hart. She is a party in
 8 a class action lawsuit against BHH LLC and
 9 Van Hauser LLC. I will be asking you some
 10 questions in connection with that case.

11 Do you understand that?

12 A. Yes.

13 Q. And do you understand that you
 14 are not being sued and you are not a party
 15 to this case and that no one is making
 16 claims against you in this case?

17 A. Yes.

18 Q. Have you ever sat for a
 19 deposition before?

20 A. No. This is first time.

21 Q. Have you ever been a party to a
 22 lawsuit before?

23 A. Yes.

24 Q. When was that?

25 A. It was in 2004. And the case

1 for you, okay?

2 A. Okay.

3 Q. Is Mr. Wing representing you
 4 today?

5 A. Yes.

6 Q. Are you compensating him for his
 7 representation today?

8 A. No.

9 Q. Do you know who is compensating
 10 him for his representation?

11 A. I don't know.

12 Q. Today's deposition is being
 13 videotaped.

14 Do you understand that?

15 A. Yes.

16 Q. Do you also understand there is
 17 a court reporter here today, and the court
 18 reporter is transcribing everything we say
 19 for the record?

20 A. Yes.

21 Q. So let's please try to speak at
 22 a reasonable pace to help the court
 23 reporter take down our words.

24 Will you help me with that?

25 A. Okay.

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D. Feuerstein

1 Q. It's also difficult for the 2 court reporter if we talk over each other, 3 so I will try to never interrupt you while 4 you are talking, and I ask that you please 5 try to let me finish my questions before 6 you begin your answers, okay?	1 in Hong Kong. 2 Q. And the business address you 3 listed before in Queens, is that an 4 address for Intellitec, as well?
7 A. Okay.	5 A. Yes. Intellitec USA, yes.
8 Q. Also, for the benefit of the 9 court reporter, please try to answer my 10 questions verbally because the court 11 reporter cannot see nods or bodily 12 gestures or even verbal non-words such as 13 "uh-huh," okay?	6 Sorry, I have to rephrase. Here, we have 7 only two people, me and another colleague, 8 yeah.
14 A. Understood.	9 Q. What is the name much your 10 colleague?
15 Q. Is there any reason that you 16 cannot testify truthfully and accurately 17 today?	11 A. Danny Li.
18 A. No.	12 Q. What is his position?
19 Q. Are you taking any prescription 20 medications or drugs that may affect your 21 ability to think, remember or testify 22 truthfully today?	13 A. He's an overseas manager.
23 A. No.	14 Q. What are his job duties?
24 Q. Are you currently employed?	15 A. He is helping with the company's 16 daily operation, shipment, also provides 17 shipping schedule, and new projects, 18 development.
25 A. Yes.	19 Q. So let's please take a step 20 back.

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1 Q. Who is your employer?	1 markup for customer approval. Then we do 2 the model, then we go into production, and 3 we do -- sometimes we do packaging service 4 as well.
2 A. Intellitec.	5 Q. Are you an engineer?
3 Q. What is your job title?	6 A. Myself is not engineer, but I am 7 in electronic business for 8 twenty-five years.
4 A. Managing director.	9 Q. Where in China is Intellitec?
5 Q. Are you an owner of Intellitec?	10 Is it a factory or a warehouse?
6 A. Yes.	11 A. It's a factory, yes.
7 Q. Are there any other owners of 8 Intellitec?	12 Q. Where in China is that?
9 A. No.	13 A. In Dunhuang City.
10 Q. Is Intellitec incorporated?	14 Q. How big is the space?
11 A. It's incorporated in Hong Kong.	15 A. It's about four or 5,000 square 16 meters. I don't know how much it is in 17 square foot.
12 Q. How many employees does 13 Intellitec have?	18 Q. That's no problem.
14 A. We have office in Hong Kong, but 15 no one's there. It's just a corporate 16 office. And we have our accounting office 17 there and we have accountant there. So 18 the operation is actually over in China.	19 Now, is Intellitec incorporated 20 in the United States, as well?
19 And we have about a hundred workers.	21 A. Yes, but it's inactivating.
20 Q. So to clarify, you do not have 21 employees in Hong Kong, but you have 22 workers in China?	22 Q. So when was it incorporated?
23 A. Right. But Intellitec is 24 incorporated in Hong Kong, and our 25 financial operation is through the banks	23 A. I don't remember. A couple 24 years ago. I don't remember precisely.

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4 (Pages 10 - 13)

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1 A. Dissolved? No.	1 for Sunbeam, Coleman, First Alert and we
2 Q. When did the entity cease being	2 also do Emson brand and Disney.
3 an active entity?	3 Q. Did Intellitec supply past
4 A. I think we formed the company	4 repellents for Sunbeam?
5 about three years ago.	5 A. Yes.
6 Q. And why was that?	6 Q. Did Intellitec supply pest
7 A. Why is that? No, we just -- no	7 repellents for any other brand aside from
8 particular reason. No, because, actually,	8 Sunbeam and Bell + Howell?
9 all operation is done in Hong Kong and	9 A. First Alert.
10 China. So we just think because -- just	10 Q. Can you please spell that?
11 have a branch office here, not -- no	11 A. F-I-R-S-T, A-L-E-R-T. I think
12 particular reason.	12 they are very big in the smoke alarm
13 Q. Is the branch office in the	13 business. Safety products.
14 United States, is that owned or is that	14 Q. And does Intellitec continue to
15 rented?	15 supply pest repellents for First Alert and
16 A. Rented.	16 Sunbeam?
17 Q. Who pays the rent on that	17 A. Not anymore, because -- not
18 office?	18 anymore. We stopped doing that.
19 A. Hong Kong office.	19 Q. When did Intellitec first begin
20 Q. The Hong Kong entity?	20 supplying pest repellents for First Alert?
21 A. Hong Kong -- yeah, Hong Kong	21 A. I don't remember, but it has to
22 entity.	22 be about twelve years ago, twelve,
23 Q. Where are you from?	23 thirteen, fourteen years ago.
24 A. I'm from Taiwan.	24 Q. Can you give me an estimation of
25 Q. Are you a US citizen?	25 how long Intellitec supplied pest

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1 A. Yes.	1 repellents for First Alert?
2 Q. When did you become a US	2 A. For First Alert, about two
3 citizen?	3 years.
4 A. I don't remember. I think it's	4 Q. When did Intellitec first begin
5 between 2010 and 2012.	5 supplying pest repellents for Sunbeam?
6 Q. Can you please give me some	6 A. I don't remember precisely, but
7 examples of products which Intellitec	7 I think it's about 2000, year 2000 or
8 manufactures?	8 1999.
9 A. Yes. We do a lot of	9 Q. And when did that relationship
10 humidifiers. And my factories are	10 end?
11 certified, we passed the factory audit by	11 A. End in 2004.
12 Disney, so we manufacture humidifiers for	12 Q. Does First Alert continue to
13 Disney, and we also manufacture	13 distribute pest repellents?
14 humidifiers for other brands. And we do a	14 A. I think after we stopped, they
15 lot of other nonelectronic items, like the	15 also stopped pest repellent.
16 phone holders and a card that can help	16 Q. What about Sunbeam; do they
17 people find their car and, what else, we	17 continue to distribute pest repellents?
18 do a scrubber, it's an electrical	18 A. No.
19 rechargeable brush to clean the bathroom	19 Q. Why did First Alert decide to
20 and pest repellents. And we also do some	20 cease distributing pest repellents?
21 Aerolizer, air purifier.	21 MR. WING: Object to form.
22 Q. Aside from Bell + Howell and	22 You can answer.
23 Disney, what other brands do you supply	23 A. It's -- that's related to
24 products for?	24 lawsuit in 2004, because my customer did
25 A. In the past, we supply product	25 not -- did not pay, so we stopped working

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1 with that customer, and they have the
2 license for First Alert.
3 Q. If you know, why did Sunbeam
4 cease distributing pest repellers?
5 MR. WING: Object to form.
6 Go ahead.
7 A. For the same reason, related to
8 the lawsuit, where my customer was
9 having -- they had the financial issue, so
10 we stopped supplying them.
11 Q. Are you aware of any
12 correspondence between the Federal Trade
13 Commission and either First Alert or
14 Sunbeam regarding the pest repellers?
15 A. No.
16 Q. Can you please explain to me the
17 differences between the pest repellers
18 which you manufactured for First Alert and
19 the pest repellers which you manufactured
20 for Sunbeam?
21 A. The case and the design's
22 different. Outside design's different.
23 Inside, it's similar.
24 Q. And when you say "similar," do
25 you mean that it's virtually identical in

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1 Q. Who invented -- who first
2 invented the design for these three models
3 of pest repellers we've been discussing?
4 A. You mean Sunbeam, First Alert
5 and?
6 Q. Bell + Howell.
7 A. Bell + Howell. It's -- it's
8 designed by my in-house designer and
9 engineers.
10 Q. Can you please identify your
11 in-house designer and engineers?
12 A. Names?
13 Q. Yes.
14 A. Okay. Daniel Deng, D-E-N-G.
15 And the electronic engineer, I don't
16 remember, because through the years, we
17 have changed a few.
18 Q. Do you remember any of their
19 names?
20 A. The current one is Mr. Wen,
21 W-E-N. He's been with us for six, seven
22 years.
23 Q. Do Mr. Deng and Mr. Wen, are
24 they employees of Intellitec?
25 A. Yes, Intellitec China.

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1 regards to the ultrasonic sounds which it
2 emits?
3 A. It's the same frequency, but the
4 circuitry is not identical, because the
5 casing design is different. My engineer
6 would have to revise according to the case
7 design.
8 Q. Understood. As between those
9 two models and the models which Intellitec
10 manufactures for Bell + Howell, can you
11 please explain the differences between
12 those?
13 A. It's also the case and design's
14 different. You have to revise the
15 circuitry to meet the casing design.
16 And -- and sometimes, some items we have
17 add-on features like AC outlet or night
18 lights.
19 Q. But once again, in regards to
20 the ultrasonic sound waves that are
21 emitted, I understood that the circuitry
22 is different, but the ultrasonic sound
23 waves are the same frequency across those
24 three products, correct?
25 A. Correct, yes.

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1 Q. They work in the factory in
2 China?
3 A. Yes.
4 Q. Did Mr. Deng have a role in the
5 invention of the First Alert, Sunbeam and
6 Bell + Howell pest repellers?
7 A. No. No. That was another
8 designer.
9 Q. How about Mr. Wen; did he have a
10 role?
11 A. No.
12 Q. Do you remember the names of any
13 individuals who had roles in the invention
14 of these pest repellers?
15 A. I remember the first name of the
16 designer for First Alert and Sunbeam.
17 It's Kenneth. He's in Hong Kong.
18 Q. He is American?
19 A. No. He's Hong Kong. Chinese.
20 Q. Would you have his last name in
21 your records?
22 A. It's been more than -- almost
23 seventeen, eighteen years. I don't
24 remember. I have to check, and I don't
25 even know if I still have it.

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6 (Pages 18 - 21)

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1 Q. What role did you play in the
2 invention of the pest repellers?
3 A. I do -- I supervise the cosmetic
4 design, make sure it's nice and appealing.
5 And I also supervise the specifications.
6 Q. Can you please elaborate what
7 you mean by supervising specifications?
8 A. I will -- I will approve their,
9 for example, the power conception, input
10 output wattage, the intervals, the
11 frequency, and the tolerance of the
12 frequency.
13 Q. Now, going back to the initial
14 invention of these pest repellers, did you
15 play any other roles in the invention of
16 these pest repellers?
17 A. Invented from scratch? No.
18 Q. Whose idea was it to first
19 invent/manufacture pest repellers?
20 A. I don't know.
21 Q. Was it someone at Intellitec?
22 A. No. We are not the first one to
23 make pest repellers.
24 Q. Let me rephrase my question,
25 please.

1 MR. WING: Object to form.
2 A. I'm sorry, I don't understand
3 the question.
4 Q. Sure. When Intellitec decided
5 to first begin manufacturing pest
6 repellers, which sources did it use to
7 pull information from as to how to make
8 pest repellers?
9 A. Okay. They provide us samples
10 for evaluation.
11 Q. And what type of samples were
12 these?
13 A. It's -- it's a product they
14 current bought from other companies.
15 Q. Which other companies?
16 A. I think it's -- the company I
17 think is Long Whale in Taiwan.
18 Q. Do you know any American brands
19 that Long Whale supplies for?
20 A. I don't have any association
21 with the company, so I don't know.
22 Q. Any other samples that you
23 received at that time?
24 A. No.
25 Q. Did Long Whale have the same

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Page 24

1 Whose idea was it for Intellitec
2 to first begin manufacturing pest
3 repellers?
4 A. It's one agent in Hong Kong.
5 They represented other companies. So they
6 came to us, asked us to make that for
7 them.
8 Q. What's the name of the agent?
9 A. I don't remember his company,
10 but his name is Larry Slobin.
11 Q. And was he asking you on behalf
12 of First Alert?
13 A. At that time, he was
14 representing the company. At that time
15 they don't have the license yet. So we
16 was -- he asked me on behalf of his
17 client.
18 Q. And who was his client?
19 A. Team Products.
20 Q. And was Team Products the
21 predecessor to the company First Alert?
22 A. Yes.
23 Q. Did Intellitec use any other
24 products as prototypes when it first began
25 manufacturing pest repellers?

1 ultrasonic frequency as the pest repellers
2 that Intellitec went on to make?
3 A. Yes.
4 Q. So was Intellitec's role
5 basically to emulate the Long Whale
6 samples that it received?
7 A. We actually -- we do some
8 improvements.
9 Q. Can you please elaborate on the
10 improvements?
11 A. Long Whale's design is very out
12 of date, so we redesign the whole case and
13 we redo the model to make it more updated.
14 And we also improved the -- make the
15 frequency more precise. We make it more
16 precise and we improve the speaker output.
17 And we change from constant on to -- to
18 intervals, to have intervals. So we make
19 some improvement from Long Whale samples.
20 Q. Who decided that Intellitec
21 should make the frequency more precise?
22 A. I don't remember at that time.
23 Q. Did you have any role with that?
24 A. Yes, yes. I would consult with
25 the customer, so -- because I guess some

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7 (Pages 22 - 25)

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<p>1 manufacturers that have bigger range, 2 but -- and we just targeted the more 3 precise -- we choose a better supply for 4 the frequency speaker.</p> <p>5 Q. You were aware of who the 6 supplier for the frequency speaker was for 7 Long Whale, and you decided to go with 8 another supplier?</p> <p>9 A. No, I don't know their supplier. 10 We don't know.</p> <p>11 Q. Same question with improving the 12 speaker output. Was there something wrong 13 with the speaker output in Long Whale 14 products?</p> <p>15 A. The DB output was a bit low, so 16 we make it louder.</p> <p>17 Q. Now, when you say "a bit low," 18 do you mean a bit low for the pests to 19 hear? Can you explain what you mean by "a 20 bit low"?</p> <p>21 A. Yes, a bit low for the pests to 22 hear.</p> <p>23 Q. What basis did Intellitec have 24 for determining that the speaker output 25 was not sufficiently loud for pests to</p>	<p>1 A. Because louder decibel, louder 2 output represents a better -- better 3 effectiveness. And better -- a bigger 4 area.</p> <p>5 Q. So the louder it is, the greater 6 the repelling effect; is that what you are 7 saying?</p> <p>8 A. Yes.</p> <p>9 Q. And what basis do you have for 10 that statement?</p> <p>11 A. I have done some research 12 through the years.</p> <p>13 Q. Can you explain what research 14 you have done?</p> <p>15 A. I have some research from -- I 16 don't remember precisely, you know, but 17 we -- one of the research is from Heffner 18 -- I don't remember his last name. 19 H-E-F-F-E-R. He has a lot of good 20 reports.</p> <p>21 Q. Where did you find these 22 reports?</p> <p>23 A. I found it online.</p> <p>24 Q. Do you know if -- is that a 25 Mr. Heffner or Mrs. or Dr.?</p>
<p>1 hear?</p> <p>2 A. We have a lot we have a lot of 3 equipment to test.</p> <p>4 Q. I'm sorry, can you please 5 repeat?</p> <p>6 A. We've a lot of testing equipment 7 in the factory to test.</p> <p>8 Q. So what tests did you run during 9 that initial development phase?</p> <p>10 A. We have computer system to test 11 the frequency. We have the decibel 12 testing equipment to determine the output.</p> <p>13 Q. So I understood that you had 14 equipment to measure the frequency and the 15 volume.</p> <p>16 A. Yes.</p> <p>17 Q. But how did you determine that 18 those were insufficient to repel pests?</p> <p>19 A. I --</p> <p>20 MR. WING: Object to form.</p> <p>21 Continue.</p> <p>22 Q. Or I can even rephrase. How did 23 you determine that you even wanted to 24 improve upon those issues with the Long 25 Whale repellers?</p>	<p>1 A. Mr. I think there are a few. 2 There are a few Heffners. They are 3 brothers in a family. They specialize in 4 ultrasonic.</p> <p>5 Q. Are they Chinese?</p> <p>6 A. No.</p> <p>7 Q. Are they American?</p> <p>8 A. I don't know that. Sorry, I 9 don't know their background. I don't know 10 their nationality.</p> <p>11 Q. Are they academics?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know which university 14 they were affiliated with?</p> <p>15 A. I don't remember, but I think -- 16 I think -- I don't remember which 17 university.</p> <p>18 Q. Do you remember what field they 19 worked in at the university?</p> <p>20 A. I don't know the field they work 21 in the university. I only read a report 22 regarding ultrasonic and rat, rats.</p> <p>23 Q. To your recollection, did 24 Heffner or did you read any reports from 25 Heffner regarding other pests, other</p>

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<p>1 critters aside from rats?</p> <p>2 A. Yes.</p> <p>3 Q. Which critters?</p> <p>4 A. Sorry, what do you mean,</p> <p>5 critter?</p> <p>6 Q. Oh, sure. Which pests or</p> <p>7 animals?</p> <p>8 A. I know they do rats and mice</p> <p>9 and -- and they do other -- other -- other</p> <p>10 small animals, but I don't remember.</p> <p>11 It's -- this is back to seventeen,</p> <p>12 sixteen, eighteen years ago.</p> <p>13 Q. Understood.</p> <p>14 A. But they do have research for</p> <p>15 different small animals.</p> <p>16 Q. So based on the indications you</p> <p>17 read from Hefner, I guess siblings, you</p> <p>18 made the determination that you want to</p> <p>19 make these improvements to the pest</p> <p>20 repellents that Intellitec was</p> <p>21 manufacturing over the Long Whale</p> <p>22 repellents; is that correct?</p> <p>23 A. Correct, yes.</p> <p>24 Q. What other sources did you</p> <p>25 research at the time?</p>	<p>1 A. No, I don't. Yeah, because --</p> <p>2 Q. Was anything published as a</p> <p>3 result of these tests?</p> <p>4 A. No. I don't -- these are</p> <p>5 private tests. We did not publish in</p> <p>6 public.</p> <p>7 Q. Did they provide you with</p> <p>8 results of the test?</p> <p>9 A. Yes.</p> <p>10 Q. Were the results e-mailed to</p> <p>11 you?</p> <p>12 A. Yes. E-mailed to my factory in</p> <p>13 China at that time and I got a copy.</p> <p>14 Q. Was it in Chinese or was it in</p> <p>15 English or some other language?</p> <p>16 A. I think it's in English. I</p> <p>17 think both. They have both, mm-hm.</p> <p>18 Q. Do you still have a copy of</p> <p>19 those test results?</p> <p>20 A. No, I don't have those copy</p> <p>21 anymore.</p> <p>22 Q. Did you search for a copy of</p> <p>23 those test results before today?</p> <p>24 A. No.</p> <p>25 Q. What other tests did Intellitec</p>
<p>Page 30</p> <p>1 A. I don't remember. But we did</p> <p>2 some research. And later we did testing,</p> <p>3 also.</p> <p>4 Q. What method did you use for</p> <p>5 conducting the research? This was, I</p> <p>6 guess, eighteen years ago, approximately?</p> <p>7 A. Yes.</p> <p>8 Q. What methods did you use for</p> <p>9 conducting research on the topic?</p> <p>10 A. Mostly online.</p> <p>11 Q. So you conducted testing of the</p> <p>12 repellents before they hit the market,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Where was this testing</p> <p>16 conducted?</p> <p>17 A. The initial testing was</p> <p>18 conducted in China by Beijing University</p> <p>19 Agriculture Department.</p> <p>20 Q. Did you search for copies of</p> <p>21 those tests?</p> <p>22 A. Search for copy? No. This is</p> <p>23 done by us with Beijing University.</p> <p>24 Q. Right. Do you have copies of</p> <p>25 the test?</p>	<p>Page 32</p> <p>1 run before manufacturing the pest</p> <p>2 repellents?</p> <p>3 A. From eighteen years ago to now?</p> <p>4 Q. Excuse me. Before the pest</p> <p>5 repellents hit the market.</p> <p>6 A. This is the important one with</p> <p>7 Beijing University. The test was -- I</p> <p>8 think it took a few -- a few weeks, a few</p> <p>9 months to -- to finish.</p> <p>10 Q. Who wrote the protocol for that</p> <p>11 test?</p> <p>12 A. At that time the professor in</p> <p>13 Beijing University.</p> <p>14 Q. Do you know --</p> <p>15 A. We explained -- I don't remember</p> <p>16 the name because I don't contact the</p> <p>17 professor. It's through my operation in</p> <p>18 China.</p> <p>19 Q. So you mean employees in the</p> <p>20 China branch of Intellitec contacted the</p> <p>21 university, and you had no direct contact?</p> <p>22 A. No. It was my partner. I did</p> <p>23 not have direct contact. At that time --</p> <p>24 at that time I was based in Hong Kong, so</p> <p>25 it was done through my China operation.</p>
<p>Page 31</p>	<p>Page 33</p>

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1 Q. Did you have a partner
2 eighteen years ago?
3 A. Yes, eighteen years ago, I did.
4 Q. Do you still have a partner?
5 A. No.
6 Q. What is that individual's name?
7 A. Jong Sue.
8 Q. And Jong is a man, right?
9 A. Yes, a male, Chinese.
10 Q. And he is no longer affiliated
11 with Intellitec?
12 A. No.
13 Q. When did he stop being
14 affiliated with Intellitec?
15 A. 2004.
16 Q. Did he give you any -- well, how
17 did he stop being affiliated with
18 Intellitec?
19 A. It's part of the lawsuit.
20 Breach of contract.
21 Q. So there was a falling out with
22 Mr. Sue?
23 A. Yes.
24 Q. Was Mr. Sue bought out as a
25 result of that lawsuit?

1 A. Yes. I had discussed with my
2 partner.
3 Q. So did you and Mr. Sue
4 collaborate with the university on the
5 protocol?
6 A. Yes.
7 Q. But the professor initially
8 wrote it and then you provided comments;
9 is that the case?
10 A. Yes.
11 Q. What, if anything, did you
12 change from the original protocol the
13 professor provided to you?
14 A. No, we didn't --
15 MR. WING: Object to form.
16 A. I don't remember. But I don't
17 think we changed much because they are the
18 professional for pests.
19 Q. Had you ever run any tests at
20 Beijing University on the pest repellents
21 since that time?
22 A. I think we did once or twice
23 test with them through one or two years,
24 and then -- then that's it. Yeah, yeah.
25 I think professor, I think, left. I think

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1 A. No.
2 Q. What resolution came about; did
3 he just quit and leave?
4 A. He breached the contract by
5 contacting my customer. We have
6 noncompete agreement. So I stopped
7 working with him. Then -- then we got
8 into a lawsuit and I think the lawsuit
9 last two years and then he went out of
10 business.
11 Q. What do you remember about the
12 test that was run in Beijing University?
13 A. It was done by the head
14 professor of the Agriculture Department of
15 Beijing University and he led a few --
16 it's not students. It's more senior than
17 student to do the research. So -- and
18 they operated, we do mice, rat, roaches
19 and spiders. And I remember it took them
20 at least eight weeks -- two to
21 three months to finish the testing. The
22 chamber, the protocol, the chambers and
23 all the testing.
24 Q. Did you review the protocol
25 before the test was run?

1 he is no longer in Beijing University, so
2 we end up switch our testing to
3 professional laboratories.
4 Q. So you conducted, perhaps, one
5 or two more additional tests?
6 A. Including original one, one or
7 two more total.
8 Q. But this was prior to your
9 manufacture of the Bell + Howell devices,
10 correct?
11 A. Yes, that's much -- much
12 earlier.
13 Q. Can you please tell me about
14 your educational background?
15 A. I studied in Taiwan. My
16 background is international trade.
17 Q. So what degrees have you
18 received?
19 A. Here, it's a BA. Not master.
20 Pre master, what is it?
21 Q. That's a Bachelors?
22 A. A Bachelors, yes.
23 Q. So you received a Bachelors from
24 where?
25 A. From Ming Chuan University.

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10 (Pages 34 - 37)

D. Feuerstein

1 Sorry, Ming Chuan University. It's a
2 university for business.
3 Q. So it's a business university.
4 Did you have any schooling
5 beyond that Bachelors degree?
6 A. No.
7 Q. And your degree is in
8 international trade, correct?
9 A. Yes.
10 Q. Do you have any sorts of
11 professional certifications?
12 A. Professional, no.
13 Q. This individual you mentioned
14 earlier, Kenneth, do you know what his
15 background was?
16 A. Designer. He's a professional
17 designer.
18 Q. Is he a scientist?
19 A. No. He was mostly for the
20 cosmetic, the casing design.
21 Q. How about Mr. Wen; what's his
22 background?
23 A. He's electronic -- mechanical
24 engineer.
25 Q. So he has a degree in mechanical

1 engineering?
2 A. Yes.
3 Q. And what about Mr. Deng?
4 A. Mr. Deng is also a designer.
5 Q. Do you know what his degree is
6 in?
7 A. Also in design.
8 Q. Intellitec does not employ any
9 entomologists, correct? An entomologist
10 is an expert in insects.
11 A. No.
12 Q. Were you affiliated with the
13 Home Improvement Company at any point?
14 A. No, but we've been selling
15 product to home improvement stores.
16 Q. So it's just the two employees
17 come to work in your Queens office,
18 correct?
19 A. Yeah. Just me and Danny.
20 Q. Does the office space from
21 desks?
22 A. Yes.
23 Q. Is there carpeting?
24 A. Yes.
25 Q. There's tables?

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Page 39

1 A. Yes.
2 Q. Do you work at a company called
3 SGS?
4 A. Yes.
5 Q. How do you divide your time
6 between Intellitec and SGS?
7 A. I worked for SGS when I still
8 lived in Taiwan and I left SGS in Taiwan
9 in 1995 and I moved to Hong Kong and I
10 established my own company.
11 Q. So when did you begin working
12 for SGS?
13 A. I think it's about 1989.
14 Q. Do you still work for SGS?
15 A. No.
16 Q. When did you stop working for
17 SGS?
18 A. 1995.
19 Q. What was your position at SGS?
20 A. I was the executive assistant.
21 Q. For whom?
22 A. For Mr. Alegart. He was the CEO
23 of SGS in Taiwan.
24 Q. Can you please spell his name?
25 A. A-L-E-G-A-R-T.

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1 Q. What were your duties as an
2 executive assistant at SGS?
3 A. I run a lot of reports, monthly
4 reports, and manager meeting reports. A
5 lot of administration stuff. And the
6 company grew bigger and -- and I assist
7 Alegart to do operational stuff. But
8 many -- everything's about administration.
9 Q. Can you please explain what kind
10 of reports you are referring to? You said
11 you drafted reports?
12 A. We have monthly meeting with all
13 the -- we have -- SGS at that time had one
14 CEO and nine vice presidents. So every
15 month we had manager meeting. So I --
16 when there meeting, I wrote a report and I
17 submit it to the head office in Geneva.
18 Q. Is Mr. Alegart still the CEO of
19 SGS?
20 A. No. He retired.
21 Q. When?
22 A. I don't know when, because after
23 I left SGS I don't contact him anymore,
24 but I know he retired. He's Belgian, but
25 he live in Taiwan right now.

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11 (Pages 38 - 41)

D. Feuerstein

1 Q. How many employees are in the
2 SGS office?
3 A. At that time, it was about six
4 to seven hundred.
5 Q. That's the office in Taiwan?
6 A. They have several offices in
7 Taiwan.
8 Q. I see. How many were in your
9 office?
10 A. We had office in Taiwan, I
11 assume about two to three hundred. I
12 don't remember, but I remember total at
13 that time was about six to seven hundred.
14 MR. KOPEL: I ask the court
15 reporter to please mark as Exhibit 14
16 a copy of the FaceBook profile.
17 (Plaintiffs' Exhibit 14 was
18 marked for identification, as of this
19 date.)
20 Q. Ms. Feuerstein, do you have
21 Exhibit 14?
22 A. It's my FaceBook page, but I'm
23 not very active on FaceBook.
24 Q. I see here references to SGS
25 Taiwan?

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1 A. Mm-hm.
2 Q. When did you write this on your
3 FaceBook page?
4 A. I don't remember. Two, three,
5 four years ago.
6 Q. Are you still in touch with
7 anyone from SGS Taiwan from the time of
8 your employment?
9 A. No.
10 Q. Okay, thanks. You can put that
11 aside.
12 A. (Complying.)
13 Q. Can you please explain what the
14 purpose of the Bell + Howell pest
15 repellers is?
16 A. The function or the purpose?
17 Q. Thank you. Can you please
18 explain what the function is?
19 A. We use ultrasonic technology,
20 which is safe and environment friendly,
21 but effective to repel insects -- pests.
22 Q. Which pests are those?
23 A. Rats, mice, spiders, ants and
24 roaches.
25 Q. Had you considered using --

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1 well, the Bell + Howell repellers are,
2 they only face in one direction, right,
3 the speakers only face in one direction,
4 correct?
5 A. Some of the -- yes, it's
6 directional, because some of the pest
7 repellers, we have two speakers.
8 Q. Some of the Bell + Howell pest
9 repellers have two speakers?
10 A. Mm-hm.
11 THE COURT REPORTER: Yes or
12 no?
13 THE WITNESS: Yes.
14 Q. Why do some of them have one
15 speaker and some of them have two?
16 A. Depends on the design and the
17 product.
18 Q. Is there an advantage to the two
19 speaker models over the one speaker
20 models?
21 A. Two speakers, advantage? Yes.
22 Two speaker one, we have two different
23 frequencies. And again it's because there
24 are two speakers, so the coverage is -- is
25 bigger.

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1 Q. Who decided to manufacture
2 models that are two different frequencies?
3 A. I have discussed this with the
4 customer.
5 Q. Who had the idea?
6 A. Whose idea, because I did make
7 these in the past for Sunbeam and First
8 Alert, so we making two speaker and we
9 making one speaker.
10 Q. What frequencies do the Bell +
11 Howell repellers emit?
12 A. 40 kilohertz and plus/minus
13 about five kilohertz. So it's a range.
14 Q. Did you or anyone else at
15 Intellitec confer with outside scientists
16 in developing Bell + Howell pest
17 repellers?
18 A. Scientists? No.
19 Q. Did you or anyone at Intellitec
20 consult any treatises on pest management?
21 A. What is treatises?
22 Q. A treatise is like a textbook?
23 A. For pest management?
24 Q. Correct.
25 A. No.

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12 (Pages 42 - 45)

D. Feuerstein

1 Q. Have you heard of a handbook or
2 a book called the Handbook of Pest
3 Control?

4 A. I probably read some of it
5 online.

6 Q. Oh, so you think that you saw
7 that book online and read it? When was
8 that?

9 A. A couple years ago. Maybe not
10 the same book, but I do research from time
11 to time to understand.

12 Q. Can you explain how the
13 ultrasonic technology works to repel
14 pests?

15 MR. WING: Object to form.
16 You can answer.

17 A. Because these pests have a poor
18 range of hearing range. And for them,
19 mostly it's ultrasonic, meaning it's
20 inaudible to human ear. So in order to
21 repel them, we made very loud noise.
22 That's why I said output of speaker is
23 important. We can't hear them, but for
24 them, it's very loud and annoying. And we
25 also designed this pause, on/off, on/off,

1 from you or what materials did you provide
2 to him in connection with this sales
3 pitch?

4 MR. WING: Object to form.

5 A. I presented the product we did
6 in the past. And I presented AEP
7 registered factory, American Environmental
8 Protection Agency we are registered,
9 because -- and I presented -- I presented
10 a design we have for Sunbeam and I
11 presented the stores we used to work in
12 the past, through Team Product. We don't
13 do direct sales. So through Team Product,
14 we do resale. And ultrasonic technology,
15 how we repel the pest.

16 Q. Did you supply him with any test
17 results at the time?

18 A. During first meeting, no.

19 Q. When did Intellitec first begin
20 supplying pest repellers to Bell + Howell?

21 A. I think it's the following year,
22 2007.

23 Q. How big was the first shipment
24 of pest repellers?

25 A. It's a test shipment. I think

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1 so that we are better than constant on and
2 off. Because of the noise, constantly
3 emits such a loud noise, they can't take
4 it, and eventually will leave the place.

5 Q. When did you first make contact
6 with anyone at Bell + Howell?

7 A. 2006.

8 Q. Who was that with?

9 A. You mean who introduced me or
10 who do I meet?

11 Q. Good question. First of all,
12 who introduced you?

13 A. Through a mutual friend.

14 Q. And who did you first speak to
15 at Bell + Howell?

16 A. Stephen. Stephen Michelle.

17 Q. Was this in person or by
18 telephone?

19 A. I think our first meeting was in
20 person.

21 Q. And at this meeting, did you
22 suggest that you could manufacture pest
23 repellers for Steven's company?

24 A. Yes.

25 Q. What materials did Stephen ask

1 it's about 5,000 pieces.

2 Q. Which model of pest repeller was
3 that shipment?

4 A. It's a pest repeller with AC
5 outlet on the side, so you can plug the
6 cable on the side.

7 Q. Did that have the Bell + Howell
8 name on it?

9 A. Yes.

10 Q. Was there an agreement made
11 between Intellitec and Bell + Howell for
12 Intellitec to supply the pest repellers to
13 Bell + Howell?

14 A. We have the authorization later
15 to manufacture product for and some
16 purchase order, but there is no agreement.

17 Q. Have there been set prices at
18 which Intellitec provides the pest
19 repellers to Bell + Howell?

20 A. Yes.

21 Q. How often have those prices
22 fluctuated?

23 A. Very seldom. We very stable in
24 manufacturing business.

25 Q. So how has Bell + Howell gone

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13 (Pages 46 - 49)

D. Feuerstein

<p>1 ahead and made orders from Intellitec over 2 the years?</p> <p>3 A. I don't -- how? You mean?</p> <p>4 Q. What mode of communication has 5 Bell + Howell used to make orders for --</p> <p>6 A. Oh, they will -- at the 7 beginning, it was faxed. The order was 8 done by e-mails.</p> <p>9 Q. So would Bell + Howell request a 10 number and then you would give them a 11 quote each time?</p> <p>12 A. No. We quote by models. So 13 even it's one piece or -- yeah, for big 14 order, for big quantity, we will 15 probably -- we will work on the cost. But 16 mostly just very stable.</p> <p>17 Q. Who designed the packaging for 18 the Bell + Howell repellents?</p> <p>19 A. My designer.</p> <p>20 Q. That's Mr. Deng?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have input on it?</p> <p>23 A. Yes. Once he's done, he will 24 send it to me for approval.</p> <p>25 Q. Then?</p>	<p>1 for the instruction sheet --</p> <p>2 A. Yes.</p> <p>3 Q. -- used here?</p> <p>4 A. Yes.</p> <p>5 Q. Understood.</p> <p>6 MR. KOPEL: I ask the court 7 reporter to please mark as Exhibit 15 8 a document bearing Bates numbers 9 BHH, LLC 006640 to 6666.</p> <p>10 (Plaintiffs' Exhibit 15 was 11 marked for identification, as of this 12 date.)</p> <p>13 Q. Ms. Fuerstein, please take a 14 moment to flip through it, if you would 15 like, and let me know when you are ready.</p> <p>16 A. (Reviewing exhibit.) Okay.</p> <p>17 Q. Do you have Exhibit 15? Have 18 you seen it before?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. These are the artwork, the 22 packing artwork for pest repellent.</p> <p>23 Q. Thank you. I apologize. I 24 intended for this to actually be provided 25 to you in color, and I see it's in</p>
<p>Page 50</p> <p>1 A. Then I send it to -- to Van 2 Hauser for approval.</p> <p>3 Q. So along the way, you might have 4 made comments, Van Hauser might have made 5 comments, in order to arrive at the 6 finished product, correct?</p> <p>7 A. Mm-hm.</p> <p>8 THE COURT REPORTER: Yes or no?</p> <p>9 THE WITNESS: I'm sorry, say</p> <p>10 that again.</p> <p>11 MR. KOPEL: Oh, sure, read 12 that back.</p> <p>13 (Whereupon, the requested 14 testimony was read back by the Court 15 Reporter.)</p> <p>16 A. Yes.</p> <p>17 Q. What about the instruction sheet 18 that comes inside the pack packaging, who 19 wrote that?</p> <p>20 A. Also Mr. Deng. Because we've 21 been manufacturing pest wear for all these 22 years, so he has a lot of template.</p> <p>23 Q. I see. So Intellitec used the 24 instructions sheet from the First Alert 25 and the Sunbeam repellents as a template</p>	<p>Page 52</p> <p>1 black-and-white.</p> <p>2 A. That's okay. Because --</p> <p>3 Q. Because you are familiar with 4 it?</p> <p>5 A. Yes. It's done by my designer.</p> <p>6 Q. And you had a role in approval 7 each of these pieces of artwork --</p> <p>8 A. Yes.</p> <p>9 Q. -- before it hit the market?</p> <p>10 A. Yes.</p> <p>11 MR. WING: Object to form.</p> <p>12 Q. Now, I know this is a difficult 13 question because there are 14 twenty-six pages here, but off the top of 15 your head, can you think of any pieces of 16 artwork for the Bell + Howell repellents 17 that were used not already contained in 18 this document?</p> <p>19 A. I don't know.</p> <p>20 Q. But none come to mind, right?</p> <p>21 There's none that you can specifically 22 think of?</p> <p>23 A. No. You have a lot of repeat 24 pages here, so it's the same -- same 25 stuff.</p>

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Page 53

14 (Pages 50 - 53)

D. Feuerstein

1 Q. So can you give me an example of
2 a page that was a repeat page, please?
3 Well, for ease of use, do you
4 see on the bottom, there's -- well, it's
5 on the side of your document there, it's a
6 BHH, LLC number.
7 A. Okay.
8 Q. So that is a good way to
9 describe the pages.
10 A. Okay.
11 Q. Can you give me an example of
12 any pages that you think are repeat pages
13 in this document, please?
14 A. Oh, repeat pages? Okay. 40 and
15 41 are repeated.
16 Q. I'm sorry, can I please stop you
17 there?
18 A. 40 and 41 are the same.
19 Q. 40 -- are you sure 40 and 41,
20 because these designs actually look
21 different. You mean the first page and
22 the second page of the --
23 A. I mean the same product. So
24 maybe we updated the artwork.
25 Q. Okay. I understand.

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1 MR. KOPEL: Strike that. Let
2 me rephrase the question.
3 Q. Have all the packaging designs
4 for the Bell + Howell pest repellers
5 stated that they are ultrasonic pest
6 repellers?
7 A. Yes.
8 Q. And do you see below, it says --
9 there's pictures and words. It says:
10 Ants, mice/rats, spiders, roaches?
11 A. Yes.
12 Q. And the same question: Have all
13 the artwork for the packaging that you
14 recall, have they all included that
15 illustration?
16 A. I think so, yes.
17 Q. And do you understand that
18 illustration to mean that these products
19 will repel those pests that are depicted
20 on the image?
21 A. Yes.
22 Q. Below it, it says: Plug it in,
23 and there is an ellipsis, drive pests out.
24 Do you see that?
25 A. Yes.

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1 A. Sorry, what I mean is the same
2 product. You see, the same six pack, and
3 we update it. We changed the -- we moved
4 the words and we updated the pictures, the
5 insert pictures.
6 Q. Okay, understood.
7 A. But it's the same product. And
8 the words -- actually, the contents are
9 the same, but use different font and we
10 move around.
11 Q. Okay, so you weren't saying that
12 you see copies of the actual package
13 design in this, you just see different
14 designs used for the same product within
15 this document, correct?
16 A. Correct, yes.
17 Q. Please turn to the last page, so
18 that's Bates number BHH, LLC 006666.
19 A. (Complying.)
20 Q. So it says at the top, Bell +
21 Howell Ultrasonic Pest Repellers with Dawn
22 to Dusk Sensors.
23 Do you see that?
24 A. Yes.
25 Q. I have all the pest repellers --

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1 Q. Who originally wrote that?
2 A. I think my designer took it from
3 the artwork we have in the past.
4 Q. Sorry, he took it from the what?
5 A. From the artwork we work before.
6 Q. Are you referring to previous
7 artwork from Bell + Howell or previous
8 artwork for --
9 A. Previous artwork for others.
10 Q. I see. So this phrase, you
11 think, appeared on either First Alert or
12 Sunbeam or both?
13 A. Yes.
14 Q. What do you interpret this
15 phrase to mean?
16 A. Plug it in, drive pest out?
17 Q. Correct.
18 A. Yeah. This is the plug-in unit.
19 So you plug into AC outlet. Meaning don't
20 do any work. And then ultrasonic work use
21 to drive pest out.
22 Q. Drive pests out of a home or
23 office?
24 A. Of the area.
25 Q. Of the area.

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15 (Pages 54 - 57)

D. Feuerstein

1 A. Of area of room where pest 2 repeller is.	1 A. Depends how big's the warehouse.
3 Q. So this phrase was not intended 4 to mean that the repellers could drive 5 pests out of a home or office?	2 Q. Well, let's say you have 3 multiple repellers.
6 MR. WING: Object to form.	4 A. Then it should work in a 5 warehouse.
7 A. It is. The repeller drive the 8 pests out from the home.	6 Q. What about a commercial setting, 7 let's say, a commercial restaurant?
9 Q. Oh, so it means it drives pests 10 out from the home?	8 MR. WING: Object to form.
11 A. Right, right.	9 Q. Would they work in a restaurant 10 setting?
12 Q. Okay, thank you.	11 MR. WING: Object to form.
13 A. Right, but the thing -- that's 14 why we do multiple packs, because each one 15 is perfect for the average size of the 16 room.	12 A. Restaurant, I don't -- I don't 13 know.
17 Q. So the multipack, so drive pests 18 out, means if you use --	14 Q. What about outdoors? Could the 15 repellers work outdoors?
19 A. You put in multi rooms.	16 MR. WING: Object to form.
20 Q. Let me just finish the question, 21 please.	17 A. I don't know.
22 The use of the multipack and 23 that statement on it is intended to mean 24 that if a consumer uses all of the 25 repellers in this pack, they will be able	18 Q. Do you see on the right-hand 19 column of this page, there's a word, it 20 says, all capitals, note, with a colon. 21 Do you see that?

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1 to drive pests out of their home, correct?	1 A. Yes, yes.
2 MR. WING: Object to form.	2 Q. And below that, it says: Note.
3 A. Yes.	3 First sentence reads:
4 Q. Okay, thank you.	4 Ultrasonic signals will lose intensity as
5 You see midway through the page, 6 it says: Home and office use? Do you see 7 that?	5 it travels.
8 A. Yes.	6 Do you see that?
9 Q. Who wrote that?	7 A. Yes.
10 A. My designer took it from the 11 past artwork.	8 Q. Who wrote that?
12 Q. Who determined that these 13 devices were suitable for home and office 14 use?	9 A. My designer.
15 A. From our experience of 16 manufacturing pest repellers.	10 Q. And was that also taken from 11 previous packaging?
17 Q. So who made that determination?	12 A. Yes.
18 A. We took it from past artwork, 19 our experience of manufacturing and how we 20 do the packing in the past.	13 Q. Who originally wrote that, then?
21 Q. Do the pest repellers work in 22 any other setting aside from home and 23 office use?	14 A. I think the packaging we had for 15 Sunbeam and First Alert.
24 A. It should be.	16 Q. Right. So who originally wrote 17 that?
25 Q. Would they work in a warehouse?	18 A. I think it's -- I believe it's 19 Team Product's -- they -- they wrote it.
	20 The company I work in the past who has the 21 license.
	22 Q. I see. Did you independently 23 verify this information?
	24 A. Yes.
	25 Q. So do you agree with this

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16 (Pages 58 - 61)

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1 statement that the ultrasonic signal will
2 lose intensity as it travels?
3 A. Yes.
4 Q. The next sentence reads: It is
5 also absorbed by soft objects such as
6 carpeting and is reflected by hard
7 surfaces such as furniture.
8 Do you see that?
9 A. Yes.
10 Q. And this was also taken from
11 previous packaging, correct?
12 A. Correct.
13 Q. And this was also originally
14 written by either First Alert or Sunbeam,
15 correct?
16 A. Yes.
17 Q. Do you agree with this
18 statement?
19 A. Yes.
20 Q. Have you independently verified
21 it?
22 A. Yes, we test it in a factory.
23 Yeah, we test -- our engineer constantly
24 do the testing.
25 Q. Can you -- I'm sorry, can you

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1 Q. Now, did you test the actual
2 repelling effects in those tests or you
3 tested the decibel levels?
4 A. The decibel levels.
5 Q. How about soft objects, did you
6 test that in-house?
7 A. I don't understand the question.
8 Q. It says here it is also absorbed
9 by soft objects such as carpeting?
10 A. Right. We also test even on
11 carpeting, it will be absorbed, yes.
12 Q. What kind of furniture did you
13 use in your testing?
14 A. I don't remember. I believe a
15 big piece of sulfur or maybe cabinets.
16 Q. So it might have been wood?
17 A. Right.
18 Q. Did you keep any sort of
19 documentation? Did you take any notes?
20 Did anyone take any notes when this
21 testing was conducted?
22 A. At that time, yes, they did take
23 note, and they send me the result.
24 Q. Would you still have that?
25 A. No. I have been changing my

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1 repeat what you just said?
2 A. We test -- we test this -- this
3 statement in a -- in a factory.
4 Q. Can you please elaborate on what
5 you mean by that?
6 A. We have the equipment. We test
7 behind the furniture. We tested in
8 different -- because, when it travel a big
9 piece of furniture, it will reduce or
10 block the ultrasonic. And we put the
11 statement here. And we did test, it did
12 lose the intensity.
13 Q. So when did you run this test?
14 A. We did this I think in the
15 beginning stage of our -- when we start
16 making pest repellers.
17 Q. Can you describe the tests that
18 you ran?
19 A. We have very good equipment of
20 testing decibel and ultrasonic. We have
21 computer equipment. So we did run tests
22 from different angles and if it's blocked,
23 we test behind the furniture. So we -- we
24 do understand -- that's why we put it
25 here, to remind the consumer.

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1 computer every year and I have so much
2 data, so I don't keep everything.
3 Q. Can you please describe the
4 tests you ran showing that it was absorbed
5 by soft objects such as carpeting?
6 A. We can test before and after
7 carpeting. With and without carpeting and
8 before and after the furniture. We
9 compare the decibel output result.
10 Q. So you placed carpeting on the
11 floor, and you placed the repeller near
12 the carpeting, and you found that the
13 carpeting absorbed --
14 A. Yes.
15 Q. -- the signals?
16 And would you suppose that might
17 extend to rugs, as well?
18 A. Yes, carpet and rug, the same
19 thing.
20 Q. What about beds? Beds are
21 another soft object, right?
22 A. Right.
23 Q. So you think a bed could
24 probably absorb the signals, as well?
25 A. Yes, it would block the signal.

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1 Q. What about if you had a lot of 2 clothing; could that absorb the signal? 3 A. I guess, yes, but we haven't 4 tested clothing. 5 Q. Understood. Do you have an 6 understanding of what kind of materials 7 could reflect the signal aside from wood 8 and sulfur? Do you think metal would 9 probably reflect it? 10 A. Metal, yes. 11 Q. What about hard plastic; do you 12 think that might reflect it, as well? 13 A. Maybe. I don't -- we didn't 14 test that one. 15 Q. Do you have carpeting in your 16 house? 17 A. Yes. 18 Q. Do you have couches in your 19 house? 20 A. Yes. 21 Q. Do you have beds in your house? 22 A. Yes. 23 Q. Would you suppose that most 24 people have those things in their houses, 25 as well?	1 nesting or feeding places behind walls, 2 under floors or within cracks? 3 A. I believe it will, but it 4 depends on -- if the crack is behind the 5 pest repeller, because it's very 6 directional, then it won't be able to 7 reach it. 8 Q. Understood. So if a pest is not 9 in the line of sound of a repeller, it 10 can't work to repel the pest, right? 11 A. Please say that again? Sorry. 12 Q. Sure. So if a pest is not 13 within the line of sound, right, the sound 14 waves, that they are on the line of the 15 sound waves -- 16 A. Right. 17 Q. -- then the pest cannot be 18 repelled? It can only be repelled if it's 19 within the line of the sound waves, 20 correct? 21 A. Possible, yes. 22 Q. So if ultrasonic signals can't 23 reach these nesting and feeding places 24 behind walls, under floors and within 25 cracks, then the pests are only repelled
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1 A. Yes. 2 Q. Moving on. The next sentence 3 reads: Ultrasonic signals cannot reach 4 nesting or feeding places behind walls, 5 under floors or within cracks. 6 Do you see that? 7 A. Yes. 8 Q. And was this sentence also 9 pulled from either First Alert or Sunbeam 10 packaging? 11 A. Yes. 12 Q. Do you agree with this 13 statement? 14 A. Yes. 15 Q. What basis do you have for 16 agreeing with this statement? 17 A. Based on few facts. Number one, 18 ultrasonic is very directional. Number 19 two, it discuss in the -- in the -- if 20 it's blocked, or it's covered by some -- 21 doesn't matter it's wood or it's soft 22 sulfur or metal, it might block some of 23 the decibel emission. 24 Q. So would the Bell + Howell 25 devices be able to repel pests that are in	1 if the ultrasonic signals can reach them, 2 correct? 3 A. Yes. 4 Q. So the repellers cannot repel 5 pests from these places because the 6 ultrasonic signals cannot reach there, 7 correct? 8 A. Correct. 9 Q. Now, would you agree that all 10 structures have nesting or feeding places 11 behind walls, under floors and within 12 cracks? 13 MR. WING: Object to form. 14 A. I don't understand the question. 15 Say that again. 16 Q. Sure. Let me actually make it 17 simpler. 18 Would you agree that all 19 structures have spaces behind walls? 20 MR. WING: Object to form. 21 A. All spaces have -- I don't know. 22 Q. Would you agree that every 23 structure that has a floor has a space 24 that is under the floor? 25 MR. WING: Object to form.
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18 (Pages 66 - 69)

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1 A. Could be, yeah.
 2 Q. Would you agree that nearly all
 3 structures have cracks somewhere, in the
 4 floor, in the wall, et cetera, that pests
 5 can get in and out of?
 6 MR. WING: Object to form.
 7 A. I cannot say that. Maybe.
 8 Maybe yes, maybe not.
 9 Q. Do you know whether ants
 10 typically dwell out in the open, or
 11 whether they typically go to these spaces
 12 behind walls, within cracks, underneath
 13 the floor?
 14 MR. WING: Object to form.
 15 A. They could be anywhere. In the
 16 cracks, outside the cracks.
 17 Q. And what about mice; the same
 18 thing, right?
 19 MR. WING: Object to form.
 20 A. It could be -- yeah, I can't
 21 tell. It could be anywhere, too.
 22 Q. Same question for rats and
 23 roaches?
 24 MR. WING: Objection.
 25 A. Yes.

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1 Q. That, as well, correct?
 2 A. Yeah, correct.
 3 Q. Because of that, would you agree
 4 that by themselves, the pest repellers are
 5 insufficient to rid an entire home of
 6 pests if it cannot reach these places
 7 where these pests might live?
 8 MR. WING: Object to form.
 9 A. Depends, it's within the reach
 10 of the ultrasonic sound wave.
 11 Q. I'm sorry, can you repeat that,
 12 please?
 13 A. Depends on how big is the home
 14 and if it's out of reach of the ultrasonic
 15 sound wave.
 16 Q. So assuming that a home has a
 17 space under the floor, right? Let's
 18 assume a home has that?
 19 A. Could be different floors.
 20 Q. Right. Could be one floor,
 21 could be many floors?
 22 A. Right.
 23 Q. If a home has a space under the
 24 floor, an ultrasonic signal cannot reach
 25 there, right?

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1 A. If it's multiple floors, yes.
 2 Q. Even one floor, the ultrasonic
 3 signals can't reach underneath the floor
 4 if the floor is made of wood, correct?
 5 A. Yes.
 6 Q. So assuming that a home has a
 7 space under the floor, do you agree that
 8 the ultrasonic, that the Bell + Howell
 9 pest repellers cannot rid that home of
 10 pests completely if it cannot reach that
 11 space?
 12 A. We have different models. We
 13 also have -- this is ultrasonic. We also
 14 have models that can reach much bigger
 15 area.
 16 Q. Now, do you have any models of
 17 the Bell + Howell pest repellers that can
 18 reach spaces underneath floors?
 19 A. Through the wires, yes. We have
 20 electromagnetic pest repeller.
 21 Q. How many repellers have
 22 electromagnetic technology?
 23 A. A few. I don't remember. Three
 24 or five. Three or four?
 25 Q. Can you identify which, if any,

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1 in Exhibit 15?
 2 A. Yes. 6642. 6643. These are
 3 the two -- same model, but different
 4 packaging.
 5 Q. Understood.
 6 A. 6650. 6651. 6652. 6658.
 7 6659. That's it.
 8 Q. Thank you. We will come back to
 9 those in a moment, but let's put those
 10 aside for now and let's discuss the models
 11 that solely have ultrasonic technology.
 12 A. Okay.
 13 Q. Assuming that a house has a
 14 space that's underneath the floors, would
 15 you agree that the Bell + Howell pest
 16 repellers by themselves cannot rid that
 17 house of pests?
 18 MR. WING: Object to form.
 19 A. I don't know.
 20 Q. So you think they might be
 21 sufficient to rid that house of pests?
 22 MR. WING: Object to form.
 23 A. I don't know. I don't see the
 24 house structure, so I cannot say, I cannot
 25 comment.

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19 (Pages 70 - 73)

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1 Q. Have any of the Bell + Howell
2 pest repellers, have you ever tested them
3 inside someone's house?
4 A. Yes. We did test in a real
5 house.
6 Q. In whose house?
7 A. In China, a real apartment
8 house.
9 Q. Who conducted these tests?
10 A. We have done so many different
11 testing. This one is done by Qmann. It's
12 a quality control company.
13 Q. When was that done?
14 A. 2011 or twelve.
15 Q. Whose house was it?
16 A. That's in China, so I don't know
17 whose house is that.
18 Q. Did you retain documentation of
19 that test?
20 A. Yes.
21 Q. Did you produce that
22 documentation?
23 A. I think, yes. What do you mean
24 produce? You mean provide?
25 Q. Yes.

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1 might be able to or might not be able to?
2 A. Possible.
3 Q. What material do you think a
4 wall could be made of in which case it
5 would be able to?
6 MR. WING: Object to form.
7 A. I don't know.
8 Q. Can you list a single material
9 you think a wall might be made of that it
10 could actually pass through?
11 MR. WING: Object to form.
12 A. Don't know.
13 Q. And the same question for the
14 floor?
15 A. Yes.
16 Q. Same answer?
17 MR. WING: Same objection.
18 A. Yeah.
19 Q. Thank you. We'll go for a
20 little bit longer and then we will take a
21 break, because I know we have been going
22 for awhile. Let me just finish this line
23 of questioning.
24 A. Sure.
25 Q. So it also says: In some cases,

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1 A. Yes.
2 Q. We can come back to that.
3 Assuming that a house or an
4 office has that space that's behind walls,
5 would you agree that Bell + Howell pest
6 repellers are insufficient to rid that
7 whole home or office of pests assuming
8 that it has that space?
9 MR. WING: Object to form.
10 A. I can't answer that.
11 Q. Last question: Assuming that
12 there are cracks in that space somewhere,
13 whether it be in the floor, in the wall,
14 would you agree that the Bell + Howell
15 pest repellers are insufficient to rid
16 that whole space?
17 MR. WING: Object to form.
18 A. I can't answer that.
19 Q. Why can't you answer that?
20 A. Because I don't see the crack,
21 so you might be able to. I don't know the
22 material of the wall. You might be able
23 to pass through. I don't know.
24 Q. So depending on what the wall
25 looks like and what it's built on, it

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1 over time, certain rodents might be
2 accustomed to ultrasonic signals, some may
3 return to their feeding or nesting areas
4 even in the presence of an ultrasonic
5 product.
6 MR. WING: We're looking at
7 666?
8 MR. KOPEL: Yes, correct.
9 MR. WING: I know we jumped
10 around, so.
11 Q. Do you see that?
12 A. Yes.
13 Q. Did that also come from packing
14 of either First Alert or Sunbeam?
15 A. Yes.
16 Q. And you also don't know exactly
17 who wrote that sentence, correct?
18 A. No. I think we provided a copy.
19 Q. Do you agree with that?
20 A. Yes.
21 Q. Who made the decision to include
22 this passage on the Bell + Howell
23 packaging?
24 A. My designer -- I asked my
25 designer to provide -- to design the

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D. Feuerstein

1 artwork based on the artwork we have in
 2 the past.
 3 Q. I see. Do you know why your
 4 designer or anyone else decided to include
 5 this on the packaging?
 6 A. Why? Because he was instructed
 7 to refer to previous packaging.
 8 Q. Understood.
 9 What basis do you have for your
 10 agreement with this passage?
 11 A. From experiences.
 12 Q. Can you please describe the
 13 experience that led you to agree with this
 14 passage?
 15 A. I have discussed this with my
 16 previous customer about this term, about
 17 this situation.
 18 Q. Which customer?
 19 A. People in Team Products.
 20 Q. So which customer was this?
 21 A. The name of the customer? I
 22 don't remember. There are several people
 23 I work with.
 24 Q. Do you know if it was an
 25 individual or if it was a business? Was

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1 remember who.
 2 Q. Have you ever tested this?
 3 A. Yes. We test in China all the
 4 time.
 5 Q. And you have seen this to be
 6 correct, that this passage --
 7 A. Yes.
 8 Q. -- to be correct?
 9 A. Yes.
 10 Q. Can you please describe the
 11 testing you have seen which shows this
 12 passage is correct?
 13 A. We always do live testing, so we
 14 always plug-in pest repellers in different
 15 areas. We will mark down the date when we
 16 begin the testing, and we observe the
 17 result.
 18 Q. So when did you do this
 19 particular testing?
 20 A. I think this is the beginning of
 21 when we start beginning manufacturing pest
 22 repeller.
 23 Q. And can you please describe what
 24 the testing was and what the results were?
 25 A. It says here. This script is

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1 it a big customer or a small customer?
 2 A. You mean -- this is the -- we
 3 are talking about Team Product. That
 4 company.
 5 Q. Right.
 6 A. I don't remember who's the
 7 person there I have spoken with about this
 8 term.
 9 Q. Oh, okay. Let me take a step
 10 back.
 11 So when you said you spoke with
 12 a customer, you don't mean a consumer who
 13 bought the product?
 14 A. No, no, no. I mean my customer
 15 who buy the product, who is importer for
 16 the product.
 17 Q. So somebody at teamwork told you
 18 that this passage was correct?
 19 A. Mm-hm.
 20 THE COURT REPORTER: Yes or no?
 21 THE WITNESS: Yes.
 22 Q. Who was that?
 23 A. I don't remember the name, but
 24 normally I went to the office and we have
 25 meeting with several people, so I don't

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1 too small for me to read.
 2 Q. I apologize. I had hoped for a
 3 better copy, but let me see if there is
 4 another page on this exhibit, actually,
 5 that has it clearer for you.
 6 A. Very small.
 7 Q. So if you see the second page,
 8 and that is Bates number BIII, LLC 006641.
 9 I think it's -- the formatting may be
 10 different, but I think it's the exact same
 11 sentence here. And it's on the right-hand
 12 side.
 13 A. Yes.
 14 Q. And the sentence begins, in some
 15 cases.
 16 Can you read that one better?
 17 A. Yes.
 18 Q. Okay.
 19 A. In some cases, right?
 20 Q. Yes.
 21 A. Yes. So --
 22 Q. Okay. So my question was, just
 23 to refresh your recollection, you said
 24 that you did testing that confirmed that
 25 this was true?

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D. Feuerstein

<p>1 A. Yes.</p> <p>2 Q. And I asked you to please</p> <p>3 describe that testing and the results of</p> <p>4 that testing.</p> <p>5 A. We do -- we -- we -- our</p> <p>6 engineering department, we plug-in the</p> <p>7 pest repeller and then we see the read --</p> <p>8 my company after a few weeks, a few</p> <p>9 months, use the ultrasonic, so through</p> <p>10 that, we will change the location of pest</p> <p>11 repeller.</p> <p>12 Q. I see. So when you say you did</p> <p>13 this testing, this wasn't done by any</p> <p>14 professional lab; this was done in-house</p> <p>15 by Intellitec, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it was done in Intellitec's</p> <p>18 China --</p> <p>19 A. In China.</p> <p>20 Q. -- factory?</p> <p>21 A. For this particular test, yes.</p> <p>22 Q. And was there a pest problem</p> <p>23 before they were plugged in in the</p> <p>24 factory?</p> <p>25 A. Was yes, mm-hm.</p>	<p>Page 82</p>	<p>1 pest repeller and it's okay again.</p> <p>2 Switched the location of the pest</p> <p>3 repeller.</p> <p>4 Q. Did you take readings to ensure</p> <p>5 that the repellers were still emitting</p> <p>6 ultrasonic frequencies --</p> <p>7 A. Yes.</p> <p>8 Q. -- at the end of three months?</p> <p>9 A. Yes.</p> <p>10 Q. And they were still emitting the</p> <p>11 same frequencies just like the first day</p> <p>12 you plugged them in, right?</p> <p>13 A. Right.</p> <p>14 Q. So you took out those repellers.</p> <p>15 Did you replace them with new</p> <p>16 repellers, or did you replace them with</p> <p>17 the same repeller?</p> <p>18 A. Same repeller.</p> <p>19 Q. And then you plugged them in in</p> <p>20 different places?</p> <p>21 A. Mm-hm.</p> <p>22 Q. And you saw a reduction of pests</p> <p>23 in those new places where you plugged them</p> <p>24 in, correct?</p> <p>25 A. Yes.</p>	<p>Page 84</p>
<p>1 Q. And then pest repellers were</p> <p>2 plugged in and you saw some effectiveness</p> <p>3 for a time.</p> <p>4 A. Yes.</p> <p>5 Q. But then you saw the pests</p> <p>6 started to return, correct?</p> <p>7 A. Maybe, but not hundred percent,</p> <p>8 mm-hm.</p> <p>9 Q. What do you mean?</p> <p>10 A. For some, we were doing</p> <p>11 different tests. Some you might see the</p> <p>12 pests again, where the pests were nearby,</p> <p>13 but some we don't see the problem.</p> <p>14 Q. Which pests? Was this something</p> <p>15 that was seen across the spectrum of ants,</p> <p>16 mice, rats, spiders and roaches?</p> <p>17 A. Yes.</p> <p>18 Q. How long of a period did you see</p> <p>19 it took until these pests began returning?</p> <p>20 A. After three months.</p> <p>21 Q. So it worked for, approximately,</p> <p>22 three months, and then the pests began</p> <p>23 returning despite the fact that they were</p> <p>24 still plugged in?</p> <p>25 A. Right. But then we switched the</p>	<p>Page 83</p>	<p>1 Q. Do you see here, it starts: In</p> <p>2 some cases? That's how the sentence</p> <p>3 starts: In some cases.</p> <p>4 A. Mm-hm.</p> <p>5 MR. WING: Yes?</p> <p>6 Q. Can you please answer that yes</p> <p>7 or no? "Mm-hm" is not good enough for the</p> <p>8 court reporter.</p> <p>9 A. In some cases, yes, sorry.</p> <p>10 Q. Can you explain what that means?</p> <p>11 A. It means sometimes the pests</p> <p>12 still were after three months, sometimes</p> <p>13 you see the pest may return. Then</p> <p>14 people -- my engineer, we know to change,</p> <p>15 to put in a different plug.</p> <p>16 MR. KOPEL: Okay. Let's take</p> <p>17 a break right now, please.</p> <p>18 THE VIDEOGRAPHER: We are off</p> <p>19 the record, approximately, 12:30 p.m.</p> <p>20 (Whereupon, a luncheon recess</p> <p>21 was taken at this time.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 85</p>

D. Feuerstein

1 (Whereupon, after a luncheon recess was
2 taken, the deposition continued as
3 follows:)

4
5 AFTERNOON SESSION
6

7
8 THE VIDEOGRAPHER: This is
9 the beginning of file number two. We
10 are going back on the record at,
11 approximately, 1:10 p.m.

12 MR. KOPEL: I would like to
13 ask the court reporter to please mark
14 as Exhibit 16 a copy of the United
15 States Design Patent Application.
16 (Plaintiffs' Exhibit 16 was
17 marked for identification, as of this
18 date.)

19 BY MR. KOPEL:

20 Q. Ms. Feuerstein, do you have
21 Exhibit 16?
22 A. Yes, I do.
23 Q. Have you seen it before? Have
24 you seen it before?

25 A. Yes.

1 And do you have Chinese patents
2 for pest repellers, the Bell + Howell pest
3 repellers, as well?

4 A. No.

5 Q. Do you see, it says: Inventor:
6 Debbie Feuerstein?

7 A. Yes.

8 Q. Is that correct?

9 A. Correct.

10 Q. And you consider yourself the
11 inventor of the Bell + Howell pest
12 repellers, correct?

13 A. Yes.

14 Q. Do you see here references
15 cited, it says, US Patent documents, and
16 there are a list of patent documents
17 there?

18 A. Mm-hm, yes.

19 Q. Do you have a recollection of
20 what these are?

21 A. You see there are a few Levine
22 Design Patent 2002, 2003. I did -- that
23 represents Levine Team Products -- Levine,
24 its the Levine family who owns Team
25 Products, the company I worked before, but

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1 Q. What is it?
2 A. It's a design patent document
3 for one of my pest repellers.
4 Q. Excuse me, I think I said
5 earlier that this is an application. This
6 isn't actually an application. This has
7 been granted, right?
8 A. Yeah, we have a few design
9 patents.
10 Q. Can you please tell me how many
11 patents you have for the Bell + Howell
12 pest repellers?
13 A. I don't remember precisely. I
14 would say about two to four.
15 Q. And that's all pest repellers,
16 all together, not just Bell + Howell?
17 A. We have design patent when we
18 work for Sunbeam and First Alert, but that
19 was back to fifteen years ago, maybe
20 longer than that, so I don't remember.
21 Q. Okay.
22 A. But those patents are not for
23 the US. Those were for -- I believe it
24 was for China. And this is a US patent.
25 Q. Thank you.

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1 I was not aware of this patent. Maybe --
2 I don't remember, but I believe it's the
3 Levine family.
4 Q. Where is Team Products located?
5 A. Parsippany, New Jersey.
6 Q. Okay, thank you.
7 You can put that aside, please.
8 A. (Complying.)
9 Q. Did you speak with Mr. Mishan
10 over the break at all?
11 A. Very briefly. We just talk
12 about what to eat for lunch.
13 Q. Did you discuss your testimony
14 today at all with Mr. Mishan?
15 A. He -- no, we did not discuss.
16 Q. He never said anything to you
17 about it either?
18 A. He said I did okay, that's it.
19 That was the only thing we talk about.
20 Q. What did you do to prepare for
21 today's deposition?
22 A. I did not really prepare
23 anything, because I have pretty good
24 memory. And I probably just checked the
25 test report. We have so many test report

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23 (Pages 86 - 89)

D. Feuerstein

1 through the years, so I double checked
 2 yesterday which year did we do which test
 3 yesterday.
 4 Q. So to your knowledge, have you
 5 found any additional testing --
 6 A. Yes, I did. I did find two test
 7 reports we did 2008 and 2009.
 8 Q. And I believe -- and you gave
 9 those to --
 10 A. I gave them to Scott yesterday,
 11 yes.
 12 Q. Aside from those, are you aware
 13 of any additional testing that hasn't been
 14 produced to us in this case?
 15 A. No, I believe everything is
 16 there.
 17 Q. Did you discuss -- in
 18 preparation for your deposition, did you
 19 have any conversation with anyone about
 20 the deposition?
 21 A. We did have some conversation.
 22 Q. Who is "we"?
 23 A. Me and Scott mainly and
 24 Mr. Mishan was -- was part of it, the
 25 discussion.

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1 Q. Was this on the phone or in
 2 person?
 3 A. In person.
 4 Q. When was this?
 5 A. Yesterday.
 6 Q. Where was this?
 7 A. At Mr. Mishan's office.
 8 Q. Was anyone else present?
 9 A. No.
 10 Q. Was anyone on the phone?
 11 A. No.
 12 Q. How long did you guys speak for?
 13 A. A couple hours, three hours.
 14 Q. Do you remember the substance of
 15 what was discussed?
 16 A. Just -- just -- mostly review of
 17 the test report we have had in the past.
 18 Q. Did Mr. Mishan give you any
 19 advice about today's deposition?
 20 A. No.
 21 Q. Did Mr. Wing give you any advice
 22 about today's deposition?
 23 A. No.
 24 MR. WING: I'm going to
 25 object. It's attorney-client

1 privilege.
 2 A. No.
 3 Q. What did you guys discuss about
 4 the tests?
 5 MR. WING: Same objection.
 6 I'm going to instruct her not
 7 to answer.
 8 A. We reviewed --
 9 MR. WING: Ms. Feuerstein, the
 10 substance of our discussions
 11 yesterday, I would say, was
 12 attorney-client privilege.
 13 Q. Mr. Mishan was present for this
 14 discussion, right?
 15 A. Yes.
 16 MR. KOPEL: So she is not a
 17 defendant in the case, right?
 18 MR. WING: But I am
 19 representing her for purposes of the
 20 deposition.
 21 MR. KOPEL: Right. But you
 22 are representing her, but Mr. Mishan
 23 broke that privilege; did he not?
 24 MR. WING: I would dispute
 25 that. That my other client, that our

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1 co-representation would break the
 2 attorney-client privilege.
 3 MR. KOPEL: We might have to
 4 revisit that, because I'm not sure
 5 that's correct. For the record, I
 6 don't think that's an appropriate
 7 instruction not to answer. Sorry, he
 8 just grabbing a document I thought we
 9 had.
 10 MR. WING: That's fine. So
 11 off the record for thirty seconds or
 12 whatever?
 13 MR. KOPEL: We can go off the
 14 record.
 15 THE VIDEOGRAPHER: We are off
 16 the record at 1:19 p.m.
 17 (Whereupon, a discussion was
 18 held off the record.)
 19 THE VIDEOGRAPHER: This is
 20 the beginning of file three. We are
 21 going back on the record at 1:19 p.m.
 22 BY MR. KOPEL:
 23 Q. I am actually going to hand the
 24 witness a document which was previously
 25 marked as Exhibit 4.

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24 (Pages 90 - 93)

D. Feuerstein

1 MR. KOPEL: Can I ask the
 2 court reporter, would you mind
 3 re-marking this as Exhibit 4, because
 4 I don't have the originally marked
 5 exhibit?
 6 (Plaintiffs' Exhibit 4 was
 7 remarked for identification, as of
 8 this date.)
 9 Q. Are you ready?
 10 A. Yes.
 11 Q. Do you have Exhibit 4?
 12 A. Yes.
 13 Q. Have you seen it before?
 14 A. Yes.
 15 Q. What is it?
 16 A. This is the instruction manual
 17 for one of my -- our pest repellers.
 18 Q. I suppose this has been updated
 19 since it looked like this, correct?
 20 A. Because I'm not the one who is
 21 in charge of the owner's manual with my
 22 factory, Mr. Deng is doing it, so I am not
 23 sure this is the most updated version.
 24 Q. So Mr. Deng is the most involved
 25 person --

1 A. Yes.
 2 Q. Now, that statement was on the
 3 original manual, correct, first; either
 4 Sunbeam or First Alert, correct?
 5 A. Correct.
 6 Q. Do you agree with this
 7 statement?
 8 A. Yes.
 9 Q. Why do you agree with it?
 10 A. Because food and smell with
 11 attract pests.
 12 Q. So if there is food present, it
 13 could cause the repellers to not properly
 14 repel the pests, correct?
 15 A. Possible --
 16 MR. WING: Object to form.
 17 A. -- but not --
 18 MR. WING: Go ahead.
 19 Q. You can answer.
 20 A. Possible, but not -- we cannot
 21 say for sure.
 22 Q. Have you tested this?
 23 A. Yes, in China.
 24 Q. Can you please describe the
 25 testing and the results?

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1 A. With Daniel, in China, yes.
 2 Q. Did Mr. Deng draft this himself,
 3 or did he take it from somewhere else?
 4 A. He take it from previous
 5 manuals.
 6 Q. Was that from Sunbeam or First
 7 Alert?
 8 A. Yes.
 9 Q. Do you think what, if anything,
 10 Mr. Deng added to this sheet that might
 11 not have appeared on the original manual?
 12 A. The -- because all our product
 13 has to be approved by UL, so I'm not sure
 14 if UL has caution in the back. This
 15 manual has to be approved and sometimes we
 16 might revise it by Underwriter Laboratory,
 17 so I'm not sure the caution is from Deng.
 18 I believe the caution is from UL.
 19 Q. I see. Anything else?
 20 A. No.
 21 Q. Do you see on the bottom left
 22 corner, it states: Make sure that all
 23 food away. The smell of food attracts
 24 pests and will decrease the efficiency of
 25 ultrasonic pest repeller?

1 A. They -- when we tested lifespan
 2 and efficiency of the test and we did try
 3 to put some food.
 4 Q. What food did you put?
 5 A. That, I don't know, because I
 6 did not contact -- I did not do the test
 7 myself.
 8 Q. And was this for all the listed
 9 pests; in other words, ants, spiders,
 10 roaches, mice and rats?
 11 A. Yes.
 12 Q. And the results of the tests
 13 were that that despite the fact that the
 14 repellers were plugged in, the presence of
 15 food still attracted the pests, even at
 16 the presence of the repellers, correct?
 17 A. Might be, but not hundred
 18 percent.
 19 Q. Can you explain what you mean?
 20 A. Sometimes they would put the
 21 food and sometimes the pests came out,
 22 sometimes they don't. So it's not 100%
 23 that when food's there, it's not working.
 24 Q. Do you know what the difference
 25 was between the times they came out and

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25 (Pages 94 - 97)

D. Feuerstein

1 the times they didn't; did they use
2 different types of food, perhaps?
3 A. I don't remember.
4 Q. Who ran these tests?
5 A. My engineering department in
6 China.
7 Q. What was the name of the
8 individual?
9 A. This is go back to early stage,
10 so I don't remember who ran the test.
11 Q. Were any documents produced as a
12 result of those tests? Were the results
13 written down anywhere?
14 A. At that time, yes.
15 Q. But you don't have those
16 anymore?
17 A. I don't have the copy.
18 Q. This was done in the Intellitec
19 factory in China?
20 A. Yeah, in our facility.
21 Q. Do you know of any disparity in
22 the results between different types of
23 pests in this test?
24 A. No, I don't remember.
25 Q. Do you see, it says right

1 foot, so it really depends on how far is
2 it from the pest repeller.
3 Q. So you are saying that if there
4 are pest repellers in each room in a
5 house, that this instruction is not
6 necessary, you no longer have to repair
7 the openings in the home?
8 MR. WING: Object to form.
9 A. I can't say that.
10 Q. Would it still be necessary?
11 A. Necessary for?
12 Q. To repair the openings in the
13 home?
14 MR. WING: Object to form.
15 Q. Do you need me to rephrase the
16 question or?
17 A. Mm-hm, yes, please.
18 Q. So as I understand it, you just
19 testified that pests can get into openings
20 in the home if they are not within reach
21 of a repeller?
22 A. Correct.
23 Q. Because a repeller is made to
24 cover a standard American-size room?
25 A. Yes.

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1 underneath there, repair any openings in
2 your home where pests can get in?
3 A. Yes.
4 Q. And this also appeared on a
5 previous manual for another product,
6 correct?
7 A. Correct.
8 Q. Do you agree with this?
9 A. Agree, yes.
10 Q. What is the basis for your
11 agreement?
12 A. From my experience, because in
13 my home, if there's a crack, especially in
14 wintertime, pests might come in, you know.
15 Q. So even in the presence of a
16 properly functioning repeller, if there
17 are openings in the home, pests can still
18 come in?
19 A. Right. Depends how big is the
20 home, and where is the pest repeller.
21 Q. Can you please elaborate on
22 that?
23 A. Our pest repeller has -- it
24 works for average American-size room. So
25 if the home is like 10,000, 5,000-square

1 Q. So if there is an opening
2 outside the reach of a repeller, then
3 pests can get in?
4 A. Correct, yes.
5 Q. What if there is a repeller in
6 every room of the house; is this
7 instruction still necessary --
8 MR. WING: Object to form.
9 Q. -- to repair openings in the
10 home?
11 A. It will help.
12 Q. So is it necessary?
13 MR. WING: Same objection.
14 A. I think it will help to increase
15 the efficiency.
16 Q. This instruction, was this ever
17 tested by Intellitec?
18 A. What, repair the home?
19 Q. Correct.
20 A. No, not this one.
21 Q. Okay, thank you. You can put
22 that aside, please.
23 A. (Complying.)
24 Q. Which third parties have you
25 utilized to test the repellers?

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26 (Pages 98 - 101)

D. Feuerstein

<p>1 A. All through the years?</p> <p>2 Q. Yes.</p> <p>3 A. The earliest one is Beijing</p> <p>4 University, the agriculture department.</p> <p>5 Q. I'm sorry to jump in. And but</p> <p>6 we no longer have documentation of that</p> <p>7 test, correct?</p> <p>8 A. No, we no longer have</p> <p>9 documentation.</p> <p>10 Q. Okay.</p> <p>11 A. Number two is SGS, in Taiwan.</p> <p>12 We did two tests with SGS in Taiwan. Then</p> <p>13 in Qmann, the quality company, quality</p> <p>14 control company, we did two tests with</p> <p>15 them in -- I don't remember precisely, I</p> <p>16 believe it's 2011.</p> <p>17 Q. And were those the house tests</p> <p>18 that you were referring to?</p> <p>19 A. Yeah, that's the house test.</p> <p>20 And then we did with SGS in</p> <p>21 China. We do several testing with SGS in</p> <p>22 China. And we do two tests with Intertek</p> <p>23 and we did one test with CTO lab. So they</p> <p>24 are professional -- SGS and Intertek are</p> <p>25 the two largest laboratories in the world.</p>	<p>1 hygiene not to do inside of factory.</p> <p>2 Q. Who typically writes the</p> <p>3 protocols for these tests?</p> <p>4 A. Some of the protocol, we took it</p> <p>5 from -- I remember the protocol from the</p> <p>6 previous testing we have with SG in Taiwan</p> <p>7 and earlier on in Beijing University. And</p> <p>8 the chamber, the chamber design we have</p> <p>9 later on, I actually got the -- we got the</p> <p>10 proposal from Michigan University in 2011,</p> <p>11 they proposed the size of chamber and the</p> <p>12 curve tunnel because ultrasonic cannot</p> <p>13 travel through curve tunnel. So actually</p> <p>14 the size of chamber was based on Michigan</p> <p>15 University's recommendation.</p> <p>16 Q. So was this a proposal made</p> <p>17 directly to Intellitec from Michigan</p> <p>18 University?</p> <p>19 A. Yes.</p> <p>20 Q. Did Michigan University ever</p> <p>21 carry out any tests?</p> <p>22 A. No, they did not. I guess they</p> <p>23 realized the difficulty of the testing.</p> <p>24 They did not even give us a quote.</p> <p>25 Q. What do you mean by the</p>
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<p>1 Q. What about Certified Testing</p> <p>2 Service? Does that ring a bell?</p> <p>3 A. What about certified testing?</p> <p>4 Q. Certified Testing Service?</p> <p>5 A. Oh, yes, the CTO, right? Sorry,</p> <p>6 I don't know their full name. I know the</p> <p>7 initials, CTO.</p> <p>8 Q. Are they affiliated with STS?</p> <p>9 A. No. They are all independent</p> <p>10 companies.</p> <p>11 Q. You can tell me if, you know,</p> <p>12 you need to see individual tests for this</p> <p>13 question, but can you tell me: Where were</p> <p>14 these tests performed?</p> <p>15 A. In different laboratories.</p> <p>16 Q. Were any of the tests that were</p> <p>17 supervised by these laboratories, were</p> <p>18 they performed in the Intellitec factory</p> <p>19 in China?</p> <p>20 A. I don't recall. Not inside our</p> <p>21 factory, because during the testing, the</p> <p>22 smell, they're horrible. This is a really</p> <p>23 bad smell. And the testing lasts several</p> <p>24 days, but the preparation might last</p> <p>25 several weeks, so it's not ethical in</p>	<p>1 difficulty of the testing?</p> <p>2 A. Just to keep the pests alive</p> <p>3 through several weeks, they require a</p> <p>4 special technician to carry on, to keep</p> <p>5 the test alive. And also the smell, the</p> <p>6 hygiene and -- so they did give us a</p> <p>7 proposal, but they did not give us a</p> <p>8 quote. So we took the proposal and we</p> <p>9 combined a few tests and we wrote a very</p> <p>10 nice -- a very thorough test protocol at</p> <p>11 the end of 2011.</p> <p>12 Q. When you say that we wrote a</p> <p>13 thorough test protocol --</p> <p>14 A. Me.</p> <p>15 Q. You wrote that?</p> <p>16 A. Me, I -- I wrote that.</p> <p>17 Q. The chambers that were utilized</p> <p>18 throughout the tests, were they reused</p> <p>19 between tests?</p> <p>20 A. No. Because the pests we buy,</p> <p>21 normally we need the new chamber almost</p> <p>22 for every new test because they won't</p> <p>23 survive, the chamber. They bite, they eat</p> <p>24 and it's very disgusting, so we don't</p> <p>25 reuse the testing. But the construction,</p>
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27 (Pages 102 - 105)

D. Feuerstein

1 the design is the same for the last few
 2 tests.
 3 Q. Have you tested other products
 4 at these labs that we just discussed?
 5 A. All the products?
 6 Q. Other products, aside from pest
 7 repellents.
 8 A. Yes. My company does a
 9 substantial amount of testing for products
 10 every year.
 11 Q. With SGS?
 12 A. With different lab. Depends on
 13 which lab. We do with different
 14 laboratory. Depends on what's their
 15 specialty. Depends on what type of
 16 testing.
 17 Q. Who selected the insects to be
 18 used in the tests? Who supplied the
 19 insects?
 20 A. We have a pest supply company to
 21 supply the insect. Some of the rats, we
 22 actually called, because the black one is
 23 hard to get now.
 24 Q. The black rat?
 25 A. Yeah, the black rat, yeah.

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1 Q. Understood.
 2 A. Efficient to everything with rat
 3 and mice and pest, normally we don't do in
 4 the office because just for the hygiene of
 5 the employees, we don't do that in the
 6 factory. The smell's really bad. Because
 7 the test is a long testing, it lasts for
 8 several weeks. The testing is
 9 eleven days, but preparation, before and
 10 after, you need extra days, so...
 11 Q. How do you select the term of
 12 eleven days?
 13 A. The previous testing, initial
 14 testing we have, I think it's -- I don't
 15 remember it's five days or seven days, but
 16 we want to see how the pest react
 17 before -- post -- pre and post ultrasonic.
 18 So we want to compare the difference under
 19 influence of ultrasonic.
 20 Q. Can you explain just briefly why
 21 it's important to have a pretest period
 22 where the repeller is not on?
 23 A. So then we want to see when you
 24 turn on and before it was turned on and
 25 after you turn off, we want to see how the

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1 Q. Who selected the species that
 2 were being tested in each test?
 3 A. We test different species
 4 because all the test reports you could see
 5 the pictures of the pest. So they are all
 6 different. It really depends on the
 7 season. Depends on what can we get. And
 8 so we test different species.
 9 Q. Who selected which species were
 10 tested in each instance; was that part of
 11 the protocol?
 12 A. In the protocol, we did not
 13 specify any special species. It really
 14 depends on what we can get.
 15 Q. And the pests were supplied
 16 directly to Intellitec, correct?
 17 A. Yes.
 18 Q. And the design, in terms of the
 19 size of the chambers used, was that also
 20 recommended by the University of Michigan?
 21 A. Yes.
 22 Q. Have you ever tested the
 23 repellents in an office environment?
 24 A. Not for the pest, not for the
 25 efficiency. For the function, yes, we do.

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1 pests react so while testing shows the
 2 activity, including where they move,
 3 including the water and for conception.
 4 Q. So if, for instance, you might
 5 see a big disparity between the chambers
 6 pretesting, right, so that might suggest
 7 that there might be some reason other than
 8 the repellents that the pests prefer one
 9 chamber over the other, correct?
 10 A. Yeah, I don't know.
 11 Q. Do you understand the question?
 12 A. No, can you say it?
 13 Q. Okay. Would you agree that the
 14 purpose of pretesting is to see whether
 15 the pests have a preference for one
 16 chamber over the other in the absence of a
 17 pest repeller?
 18 A. Correct, yes.
 19 Q. And if there is a preference for
 20 one chamber over the other in the absence
 21 of a pest repeller, that might suggest
 22 that the results of the test, even in
 23 presence of a pest repeller, would be
 24 called into question, correct?
 25 MR. WING: Object. Object to

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28 (Pages 106 - 109)

D. Feuerstein

<p>1 form.</p> <p>2 A. Sorry, I don't quite 100%</p> <p>3 understand the question.</p> <p>4 Q. Sure, it's a complicated</p> <p>5 question.</p> <p>6 Would you agree if the pretest</p> <p>7 period -- let me use a more concrete</p> <p>8 example, so it's easier to understand.</p> <p>9 Let's say you have chamber A and chamber B</p> <p>10 and let's say the repeller is in chamber</p> <p>11 A, all right?</p> <p>12 A. Yes.</p> <p>13 Q. So in the pretest periods before</p> <p>14 the repeller is turned on, let's say all</p> <p>15 the pests that you are testing, they go to</p> <p>16 chamber B.</p> <p>17 A. Mm-hm.</p> <p>18 Q. So that might suggest that they</p> <p>19 prefer chamber B for reasons entirely</p> <p>20 unrelated to the pest repeller, correct,</p> <p>21 because the pest repeller is not on?</p> <p>22 MR. WING: Object to form.</p> <p>23 A. It's possible. I don't know.</p> <p>24 It's possible.</p> <p>25 Q. And is that the reason why you</p>	<p>1 David. He's in New York. So he's a</p> <p>2 specialty in quality control. So I also</p> <p>3 asked his advice.</p> <p>4 Q. What is his last name?</p> <p>5 A. McVoy, M-C-V-O-Y. I'm not sure.</p> <p>6 I have to check my record.</p> <p>7 Q. So we've got the proposal from</p> <p>8 University of Michigan, right?</p> <p>9 A. Mm-hm.</p> <p>10 Q. And we've got advice from David</p> <p>11 McVoy.</p> <p>12 A. Yes.</p> <p>13 Q. What else did you use?</p> <p>14 A. And I also referred to the</p> <p>15 previous testing we have.</p> <p>16 Q. You mean, are you referring to</p> <p>17 the previous testing from the University</p> <p>18 of Taiwan?</p> <p>19 A. No. The University of --</p> <p>20 Q. Beijing, excuse me.</p> <p>21 A. Yeah, Beijing, yes. And we also</p> <p>22 have two pest tests we have prior to the</p> <p>23 new protocol from SGS in Taiwan.</p> <p>24 Q. Who designed those?</p> <p>25 A. Those are pretty much based on</p>
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<p>1 run a pretest?</p> <p>2 A. Yes. We want to compare pre and</p> <p>3 after. We want to see the influence of</p> <p>4 the ultrasonic with and without and how it</p> <p>5 really move, how do they consume the food</p> <p>6 and water.</p> <p>7 Q. Now, the test protocol that you</p> <p>8 utilize was based on, I believe you</p> <p>9 testified, it was the University of</p> <p>10 Michigan, the proposal they sent to you,</p> <p>11 right?</p> <p>12 A. For the chamber design, yes,</p> <p>13 mm-hm.</p> <p>14 Q. And that proposal was designed</p> <p>15 specifically for Intellitec, correct?</p> <p>16 A. Correct, yes.</p> <p>17 Q. And that was the sole basis for</p> <p>18 the protocols that you wrote later on,</p> <p>19 correct?</p> <p>20 MR. WING: Object to form.</p> <p>21 A. Not the sole basis.</p> <p>22 Q. What else did you use?</p> <p>23 A. I have referred to previous</p> <p>24 testing we have. And I also have talked</p> <p>25 to Qmann, the owner of the Qmann, he's</p>	<p>1 Beijing's protocol.</p> <p>2 Q. Okay. And Beijing made its</p> <p>3 protocol solely -- this was a new protocol</p> <p>4 Beijing made --</p> <p>5 A. Yes.</p> <p>6 Q. -- to test Intellitec's --</p> <p>7 A. Right. The new protocol is,</p> <p>8 number one, our testing period is longer.</p> <p>9 Number two, we have pre and post the test</p> <p>10 to observe the influence, ultrasonic</p> <p>11 influence for the pest. And number three,</p> <p>12 the chamber design is from the University</p> <p>13 of Michigan. So it's a combination of</p> <p>14 this. And we also, as per David's advice,</p> <p>15 we also add observation and record the</p> <p>16 water and food consumption.</p> <p>17 Q. Whose idea was it to have that?</p> <p>18 A. David.</p> <p>19 Q. I see. Are there any other</p> <p>20 sources that you used that we haven't</p> <p>21 covered in writing the protocols for these</p> <p>22 tests?</p> <p>23 A. No.</p> <p>24 Q. Who paid the labs for these</p> <p>25 tests?</p>
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D. Feuerstein

1 A. Intellitec.
 2 Q. For all of the tests, Intellitec
 3 paid?
 4 A. All of the tests, yes.
 5 Q. Were retainers given beforehand?
 6 A. What do you mean, retainer?
 7 Q. That means prepayment before the
 8 test was conducted.
 9 A. Oh, no. Everything has to be
 10 paid hundred percent before they conduct
 11 the test. All the laboratory require full
 12 payment before they start it.
 13 Q. And did the amount paid for the
 14 test, did those ever change? Did they
 15 ever alert you that you owe more money,
 16 for instance?
 17 A. No. They -- yeah, every time
 18 the test is different because it depends
 19 on who is the person who was in charge of
 20 that particular test. So every time every
 21 new test, we submit a protocol and we get
 22 a quote from them.
 23 Q. I see.
 24 A. So it's different every time.
 25 Q. And when you were deciding, for

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1 the phone several times.
 2 Q. How about SGS in Taiwan? Who
 3 was your contact there?
 4 A. I don't -- I think it's Owen. I
 5 don't remember the name. He is the head
 6 of the department.
 7 Q. Head of which department is
 8 that?
 9 A. I don't remember. It says on
 10 the report, but I don't remember.
 11 Q. It says it on the report?
 12 A. Yes. I think he is the one who
 13 signed the report. He is also the
 14 department supervisor.
 15 Q. And were you in touch with the
 16 labs over the course of testing to see how
 17 the testing progressed?
 18 A. Unless they have problem or
 19 issues about protocol, no, I just wait for
 20 their result.
 21 Q. But if problems arose then they
 22 informed you and you dealt with it?
 23 A. If the pest died during the
 24 testing, then it would require the field
 25 to do a new test and they also mention in

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1 instance, like which spiders to use, if
 2 you were running a test with spiders, so
 3 you would go to your pest supplier and you
 4 would say what spiders do you have
 5 available to you right now?
 6 A. Yes. Because we test different
 7 models different seasons and it really
 8 depends what they have.
 9 Q. Have you ever tested the
 10 repellers in the United States?
 11 A. No.
 12 Q. Have you ever tested them
 13 outside, and you will forgive my political
 14 ignorance, China, I mean China as in
 15 Taiwan, Hong Kong, have you ever tested
 16 them outside that area?
 17 A. No.
 18 Q. Do you know what David McVoy's
 19 background is?
 20 A. He specializes quality control
 21 and inspection and he also have some
 22 laboratory experiences.
 23 Q. Okay.
 24 A. But I don't know him personally.
 25 I have never met him. I talked to him on

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1 the report. Because sometimes they die
 2 from natural cause, then we have to fill
 3 in the same number of the pests.
 4 Q. Have any of these laboratories
 5 ever conducted field tests on the
 6 repellers as opposed to laboratory tests?
 7 And if you need me to --
 8 A. You mean outdoor?
 9 Q. No, that's not what I mean. I
 10 mean field tests as in try placing them in
 11 a site where there was already a pest
 12 problem, let's say?
 13 A. No. No.
 14 Q. Now, in the copies of the tests
 15 which were produced, it looks like most of
 16 them lasted right around a
 17 week-and-a-half, give or take a couple
 18 days, does that sound right to you?
 19 A. Mm-hm, yes.
 20 Q. Did you consider testing the
 21 repellers for a longer period than that?
 22 A. Longer period? No. We haven't
 23 done longer period than our current
 24 protocol.
 25 Q. Why do you think that a

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1 week-and-a-half was the correct amount of
2 time to use in the protocol?
3 MR. WING: Object to form.
4 Q. You can answer.
5 MR. WING: You can.
6 A. Because from our experience, it
7 would take a few days for the ultrasonic
8 to kick in. The pests really cannot
9 endure the constant loud noise. They
10 don't move from day one. They move from a
11 few days. So that's how we determine
12 eleven period, eleven days, it's the
13 appropriate testing period.
14 Q. I see. So these tests were
15 designed to see if the -- would you agree
16 when I say that the purpose of these tests
17 were designed to see if the repellency
18 effect of these devices would kick in,
19 rather than to measure their long-term
20 effects, let's say?
21 A. Sorry, I don't understand the
22 question.
23 Q. Would you agree that none of
24 these tests measured the efficacy of the
25 devices over a longer period of time?

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1 A. But there's --
2 Q. Sorry, go ahead.
3 A. Sorry, we did provide a format,
4 but these are independent labs. They
5 refer it, but they actually have their own
6 form and their own document.
7 Q. So in other words, for instance,
8 if you were contracting with Intertek to
9 do tests for you, you provided them with
10 the SGS reports so they would know how to
11 format their report?
12 A. They know how to conduct the
13 test as per the report, yes. It give them
14 better understanding.
15 Q. So in many instances where the
16 language mirrors -- right, if an Intertek
17 report, the language sounds the same as
18 the SGS report, that's because they pulled
19 that from the SGS report, correct?
20 MR. WING: Object to form.
21 A. I don't know about it.
22 Q. You don't know?
23 A. Yeah.
24 MR. KOPEL: I ask the court
25 reporter to mark as Exhibit 17 a

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1 MR. WING: Object to form.
2 A. Sorry, I still don't understand,
3 I'm sorry.
4 Q. That's okay.
5 So --
6 A. Because you could see from a
7 test report the pests gradually moved
8 after two or three days.
9 Q. Right. So if a test lasts for
10 eleven days, let's say, right?
11 A. Min-hm, yes.
12 Q. So this test was designed to see
13 what the effect would be over eleven days,
14 the test was not designed to see what the
15 effect would be over twenty days or
16 forty days or fifty days, correct?
17 A. No. We haven't done that test.
18 We have not done that test.
19 Q. When you conducted a test with
20 these laboratories, did you give them
21 copies of prior testing reports?
22 A. Yes. Some of them, because some
23 of them, they don't know how to do the
24 test, so we did provide them the format.
25 Q. So --

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1 document bearing the Bates numbers
2 BHJ, LLC 001268 through 1272.
3 (Plaintiffs' Exhibit 17 was
4 marked for identification, as of this
5 date.)
6 Q. Please let me know when you are
7 ready.
8 A. Yes.
9 Q. Do you have Exhibit 17?
10 A. Yes, I do.
11 Q. Have you seen it before?
12 A. Yes.
13 Q. What is it?
14 A. It's the progress report
15 regarding new testing.
16 Q. Is this an e-mail from you to
17 Jeffrey Mishan, dated April 1, 2016?
18 A. Yes.
19 Q. So this e-mail was sent during
20 the course of testing to update Mr. Mishan
21 on what was happening in the testing,
22 correct?
23 A. Yes.
24 Q. You see it says 3/18 to 3/24.
25 There is a bullet point that says that?

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1 A. That's the date, yes.
 2 Q. Do you see just below, it says:
 3 SGS and Intertek were onsite to supervise
 4 testing?
 5 A. Yes.
 6 Q. Who were SGS and Intertek
 7 supervising?
 8 A. They have their own technician.
 9 They send their own – each lab have their
 10 own technician. So there's different
 11 technicians from two different labs.
 12 Q. Were they collaborating on this
 13 test?
 14 A. No. They came in different
 15 time.
 16 Q. Where was this?
 17 A. It was in Dunhuang. It's
 18 independent facility because this test is
 19 so unhealthy, so it cannot be conducted in
 20 any lab or factory environment.
 21 Q. So what was this independent
 22 location? Can you please describe it?
 23 A. It's a building in Dunhuang.
 24 Dunhuang City, in China.
 25 Q. It's a building, you said?

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1 mice might escape from the chamber so it
 2 would affect the test results. So they
 3 want us to repair everything before they
 4 continue.
 5 Q. So at that point you made a
 6 decision to move the testing to another
 7 location?
 8 A. Yes. Also because it was a
 9 rainy season and it was very -- the
 10 humidity was 80, 90 percent and this
 11 testing, we have video onsite seven -- I
 12 mean, twenty-four hours. And because the
 13 humidity was so hot, they won't be able to
 14 see through the chamber to see inside the
 15 pest activity. So then we have to move to
 16 another location with less humidity.
 17 Q. Did SGS and Intertek, did they
 18 have access to each other's testing within
 19 that same location?
 20 A. No, no, no.
 21 Q. How do you know that?
 22 A. You mean access to each other?
 23 Q. Yes.
 24 A. Means that they met each other?
 25 Q. In other words, they were

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1 A. Yes, it's a -- I wasn't there,
 2 so I don't know the full description of
 3 the building.
 4 Q. Do you see on the fifth bullet
 5 point under that heading, it says: SGS
 6 and Intertek technicians ordered us to
 7 stop testing?
 8 A. Right.
 9 Q. Who did they order to stop
 10 testing?
 11 A. Ordered -- I shouldn't say
 12 order. They told us they would stop
 13 testing because the chamber was broken, so
 14 they refused to pursue. The chamber was
 15 broken by the rat. They bite it and it
 16 was broken. So we need to -- I don't
 17 remember. I think one chamber, we have to
 18 remake it and some of them we have to
 19 repair it.
 20 Q. So when you say ordered us to
 21 stop testing, who was conducting this
 22 testing that was ordered to stop it?
 23 A. Maybe my English wasn't right.
 24 Just they required to stop the testing.
 25 So because the chamber was broken, the

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1 running separate tests in one location?
 2 A. Yes. They came -- they came in
 3 different times, so they don't see each
 4 other.
 5 Q. They didn't see each other?
 6 A. No, they didn't see.
 7 Q. How long were they there for
 8 each visit?
 9 A. A couple hours. But again, this
 10 testing is filmed with camera the whole
 11 time.
 12 Q. And were they in contact with
 13 each other about the testing?
 14 A. No.
 15 Q. How do you know that?
 16 A. Because this is their policy.
 17 All the laboratory are independent. They
 18 are highly ethical. They have to be --
 19 you know, they cannot have influence from
 20 any third-party about their own test
 21 result.
 22 Q. Thanks. You can put that aside.
 23 A. (Complying.)
 24 MR. KOPEL: I ask the court
 25 reporter to please mark as Exhibit 18

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<p>1 a document bearing the Bates number 2 Feuerstein 000086 to 000100. 3 (Plaintiffs' Exhibit 18 was 4 marked for identification, as of this 5 date.)</p> <p>6 Q. Please let me know when you are 7 ready.</p> <p>8 A. (Reviewing exhibit.) Yes.</p> <p>9 Q. Do you have Exhibit 18?</p> <p>10 A. Yes.</p> <p>11 Q. Have you seen it before?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's pest test report from 15 Intertek.</p> <p>16 Q. Is this the test report, does 17 this reference the same test that you were 18 discussing in the e-mail we just talked 19 about, Exhibit --</p> <p>20 A. Yes.</p> <p>21 Q. -- 17?</p> <p>22 Do you see about halfway down 23 the page, it says test: Standard/method, 24 according to client's requirements?</p> <p>25 A. Which page are you on?</p>	<p>1 record the result.</p> <p>2 Q. Who were they witnessing?</p> <p>3 A. Their technician from Intertek.</p> <p>4 Q. So you are saying they conducted 5 the test?</p> <p>6 A. They -- they --</p> <p>7 Q. I'm sorry, maybe I can clarify.</p> <p>8 A. Okay.</p> <p>9 Q. Did they conduct these tests, or 10 did they witness the test?</p> <p>11 MR. WING: Object to form.</p> <p>12 THE WITNESS: I can answer?</p> <p>13 MR. WING: Yes.</p> <p>14 A. They -- I don't know how to say 15 conduct or witness. They come in, they 16 see the chamber and they record the result 17 and they weigh the water and the food 18 consumption, so I don't know how you say 19 it's witness or conducted.</p> <p>20 Q. So they were not observing a 21 third-party conducting the test; they were 22 conducting it themselves?</p> <p>23 A. Yes.</p> <p>24 Q. Please keep that handy. I would 25 like to come back to it.</p>
<p>Page 126</p> <p>1 Q. Sure. I am on page 86, Bates 2 number 86.</p> <p>3 A. Okay.</p> <p>4 Q. And there is a heading that 5 says: Test content.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then it says: Test 9 standard/method, it says, according to 10 client's requirements.</p> <p>11 A. Yes.</p> <p>12 Q. So this is referencing the fact 13 that you gave them the protocol first, 14 right?</p> <p>15 A. Correct, yes.</p> <p>16 Q. Do you see on top of that, 17 it says: Test requested, witness for 18 performance testing, rats and mice?</p> <p>19 A. Yes.</p> <p>20 Q. Is that true; were they a 21 witness for performance testing?</p> <p>22 A. Yes. Witness means that they 23 record -- we provide the chambers.</p> <p>24 Chamber, the design's ours, we provide the 25 chambers, so they come in to witness and</p>	<p>Page 128</p> <p>1 A. Okay.</p> <p>2 MR. KOPEL: I ask the court 3 reporter to mark as Exhibit 19 a 4 document bearing Bates number BHH, LLC 5 1531 to 1544.</p> <p>6 (Plaintiffs' Exhibit 19 was 7 marked for identification, as of this 8 date.)</p> <p>9 Q. Please let me know when you are 10 ready.</p> <p>11 A. (Reviewing exhibit.) Yes.</p> <p>12 Q. Are you ready?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have Exhibit 19?</p> <p>15 A. Yes.</p> <p>16 Q. Have you seen it before?</p> <p>17 A. Yes.</p> <p>18 Q. What is it?</p> <p>19 A. It's a cover letter that I sent 20 to SGS 2016 test report to Mr. Mishan.</p> <p>21 Q. And is this referencing an SGS 22 test that was run concurrent with Intertek 23 tests in Exhibit 18?</p> <p>24 A. Yes.</p> <p>25 Q. Can you please turn to the last</p>

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1 page of Exhibit 19, that's page BIII, LLC
2 001544?

3 A. What's the number again?

4 Q. Sure. It's BHH, LLC 001544.

5 A. Okay.

6 Q. It's the last page of
7 Exhibit 19.

8 A. Got it.

9 Q. Do you see halfway in the page,
10 it says: Note: In accordance with
11 client's instructions -- now, they are
12 referring to you, you are the client,
13 that's Intertek?

14 A. Yes.

15 Q. -- the company involvement has
16 been limited to witnessing/observing a
17 third-party's interventions at the
18 facility where the interventions took
19 place. The company's sole responsibility
20 was to be present at the time of the
21 third-party interventions and to confirm
22 and report the occurrence of the
23 interventions. The company is not
24 responsible for the methods applied, the
25 qualifications, actions or omission of the

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1 A. The company -- who are they
2 referring to, the company? It's Intertek
3 or? This is done in an independent
4 facility and the chambers are all sealed,
5 they mention it in their previous report.
6 And as I say, they can't do this testing
7 inside their own lab because the hygiene
8 reason, right. So this facility we rented
9 for the testing.

10 Q. Okay.

11 A. Yes. So I guess that they are
12 referring to the third-party, maybe, just
13 referring to the third-party who owns the
14 facility.

15 Q. Okay.

16 A. And you see on the last page,
17 1544, on the top, do you see the pictures?
18 There are several cameras, actually
19 installed, in the facility to film the
20 entire process of the testing. Do you see
21 the last page, there are actual cameras?

22 Q. So you believe the third-party
23 that is referenced in this paragraph is
24 referring to the owner of the facility?

25 A. Yes.

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1 third-party's personnel or results or
2 effectiveness of the interventions.

3 Do you see that?

4 A. Yes.

5 Q. Is that true or false?

6 A. I think this is just a general
7 term the lab put in to -- it's just a
8 general term.

9 Q. Who is the third-party they are
10 referencing?

11 A. I guess they are referring to
12 the facility.

13 Q. Was the facility's personnel
14 conducting the interventions in the test?

15 A. I'm sorry, the question again?

16 Q. Sure. Was the facility's
17 personnel conducting the interventions in
18 this test?

19 A. No, because all the chambers was
20 sealed by them, so no other body can open
21 the chambers.

22 Q. Do you see here it says: The
23 company's sole responsibility was to be
24 present at the time of the third-party's
25 interventions? Sentence two.

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1 Q. Do you know who the owner of the
2 facility was?

3 A. No, I don't. I don't get
4 involved about their renting the space.
5 We just -- they just tell me the space,
6 it's good enough for us to run the
7 testing.

8 Q. To your knowledge, did the owner
9 of the facility or its personnel have any
10 scientific, specialized scientific
11 knowledge or capability to run tests?

12 A. No, no.

13 Q. Do you agree that where it says
14 here the company's involvement has been
15 limited to witnessing/observing a
16 third-party's interventions at the
17 facility where the interventions took
18 place, do you believe that's true or
19 false?

20 MR. WING: Object to form.

21 You can answer.

22 A. I believe they have the full
23 control because since they seal
24 unbreakable seal on the chambers, so no
25 one else can open the thing. But as a

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1 laboratory, I think they just put this
2 clause to protect themselves.
3 Q. Do you believe that it was put
4 here to protect themselves, but it's not
5 true?
6 MR. WING: Object to form.
7 A. Protect themselves, yes.
8 Q. But do you believe that this is
9 false?
10 MR. WING: Same objection.
11 A. Yes. Because no one's -- no
12 one's able to touch those chambers.
13 Q. Okay.
14 A. From the picture before, you
15 could see the seal of the -- on the
16 chambers and design close, so nobody can
17 open it.
18 Q. Did you look over this test
19 before you sent it to Mr. Mishan?
20 A. I did read it.
21 Q. Did you go back to the company
22 and say why did you put something false in
23 the test?
24 A. No.
25 Q. Did it concern you that there

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1 was something --
2 A. For me, I just think it's a
3 general clause for laboratory to put that
4 term on.
5 Q. So it didn't concern you that
6 you thought something in there was false?
7 A. No.
8 MR. WING: Object to form.
9 A. No. Especially testing is the
10 most thorough testing we have with a video
11 recording, so I don't believe any
12 personnel except their lab technician is
13 doing the testing.
14 Q. Did you ever reach out to
15 Intertek and say, why did you list
16 yourself as a witness; you are the one who
17 conducted the test?
18 A. No, I don't contact Intertek,
19 no.
20 Q. Did it concern you that they
21 listed themselves as a witness when you
22 believe that they were more than a
23 witness?
24 A. I did think about that, but I
25 also thought of because this testing is

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1 supported by video recording, so I'm not
2 concerned.
3 Q. On Exhibit 18, when it says
4 witness for performance testing, do you
5 disagree with that?
6 MR. WING: Object to form.
7 A. Yes. Sometimes the English is
8 not really the best I would like, but this
9 lab, we can't really make them change
10 much.
11 Q. But to clarify, you do disagree
12 with that statement, right?
13 MR. WING: Object to form.
14 A. I don't have particular opinion
15 about this term because for me, I think
16 most important is the result, they record
17 it in the report.
18 Q. Okay, sure. I'm just asking if
19 you agree with this term or not.
20 A. I think I'm okay with it.
21 Q. So you think that they were a
22 witness?
23 A. They witness, but they are also
24 conducting the report. It says in the
25 report. So I am not -- no, I think it's

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1 okay, because for me, the most important
2 is the result, effect of the test.
3 Q. Who is Leo Lynn?
4 A. I believe it's the technician
5 who performed this test.
6 Q. Do you know what his
7 qualifications are?
8 A. I do. I do. But I don't have
9 it with me right now. I think he's --
10 they are specialists, professionals.
11 Q. Do you know if they have ever
12 conducted other tests on ultrasonic pest
13 repellers?
14 A. No, I don't know.
15 Q. Do you know if they have ever
16 conducted other tests on pest management
17 products?
18 A. Yes. Intertek performed a test
19 a couple years earlier.
20 Q. What was that?
21 A. I don't remember which year,
22 2013 or '14, they did another test,
23 ultrasonic pest repeller, but it's not
24 done by Leo Lynn. It was a different
25 technician.

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35 (Pages 134 - 137)

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1 Q. Okay. So that was also a test
2 on an ultrasonic repeller?
3 A. Yes.
4 Q. Other than a test done on your
5 ultrasonic repellers, are you aware of any
6 tests that Intertek has done on pest
7 management products or --
8 A. We don't know. They won't
9 reveal that information to us.
10 Q. The same goes for the other labs
11 we discussed before, right?
12 A. Yes.
13 Q. Who is Sam Lin?
14 A. It's a supervisor of Leo.
15 Q. Is he related to Leo?
16 A. Hm? I'm sorry?
17 Q. Is he related to Leo?
18 A. No. They are -- no, I'm sure --
19 I'm sure they are not related. Lin is a
20 pretty big Chinese name in China. It's
21 very common. I am sure they are not
22 related.
23 I think I asked for their
24 qualification a few weeks ago, but I don't
25 have it with me right now.

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1 We provide the chambers and the
2 chamber design is per our protocol, so we
3 provide the chambers. And because the
4 rat -- they eat each other, rat will eat
5 mice, mice will eat spiders, so we have
6 separate chambers for each pest.
7 Q. What's Mr. Li's background?
8 A. Mr. Li's engineer. He is also a
9 qualified certified ISO 9000 engineer. He
10 work for my company. He is doing
11 everything about operation. He is
12 responsible.
13 Q. So his position at your company
14 is engineer?
15 A. Not engineer. He is actually a
16 manager for operation.
17 Q. Do you know where he has his
18 degree from?
19 A. I don't remember. He is a
20 university graduate. And he has a lot of
21 certifications.
22 Q. Do you know what those
23 certifications include?
24 A. I know including ISO 9000. He
25 can certify factory with ISO 9000 system.

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1 Q. In this experiment, who prepared
2 the experiment? Was that Intertek?
3 Intertek prepared the experiment?
4 A. What do you mean, "experiment"?
5 Q. This test, who set up this test?
6 A. You mean the chambers?
7 Q. Yes.
8 A. We provide the chambers.
9 Q. Who set up the chambers with the
10 insects?
11 A. I think my people set it up.
12 When they set it up, they come in, we have
13 to spread the test evenly, it was with the
14 supervision of the labs.
15 Q. Who -- which of your people set
16 it up?
17 A. Jason.
18 Q. Who --
19 A. Jason Li of my office in China.
20 The chambers --
21 Q. I'm sorry, did we discuss Jason?
22 What is his last name?
23 A. Jason Li.
24 Q. D?
25 A. No. Li, L-I.

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1 And he, himself, is a mechanical engineer.
2 Q. So Intertek watched Mr. Li set
3 up the experiment, correct?
4 A. We -- we -- when we say set up,
5 we just set up the chambers. But when we
6 put the pests into the chambers, that was
7 with the supervision of the laboratories.
8 Q. Okay, so Mr. Li put the pests
9 into the chambers while the laboratories
10 were watching, right?
11 A. Yes.
12 Q. And sometimes there were
13 additional pests added to the chambers
14 during the course of the experiment when
15 certain pests died, right?
16 A. Yes.
17 Q. Who did -- did Mr. Li do that,
18 as well?
19 A. We had to do that with the
20 supervision of the lab because they have
21 to open the chamber, otherwise we don't
22 have any access to touch any of the pests.
23 Q. Okay.
24 A. So everything -- everything --
25 they do the head count of the pests, they

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1 have to come in, open the chamber, take
2 off the seal and then do whatever they
3 have to do, count the pests, add water,
4 weigh the water and weigh the food and
5 they have to record all the consumption of
6 the water and the food.

7 So they did all of that
8 themselves, and we were just on the side
9 to see what else, you know.

10 Q. When food and water was added,
11 Mr. Li added that and they were watching?
12 A. No. They added. The lab was
13 added. We are not allowed to touch. They
14 added themselves.

15 Q. Mr. Li set up the experiments
16 and the pests for all the laboratory tests
17 you've produced?

18 A. Yes, the chambers only.

19 Q. And he was onsite for the
20 testing?

21 A. He was not, unless -- I mean,
22 the room was locked, but he was there when
23 the laboratory technicians were there.

24 Q. Mr. Li had a key to that, to the
25 premises, right?

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1 A. No. We are two -- there are two
2 different test equipment. Rat has eats on
3 chamber A and B and mice have eats on
4 chamber A and B, because if we put them in
5 one chamber, the rats will be eaten by the
6 rats -- the mice will be eaten by the
7 rats. Rat is more vicious and they are
8 much bigger size. So you could see -- you
9 don't see mice and rat together in one
10 picture.

11 Q. Do you see other pictures here
12 depicting the separate devices used?

13 A. From 000094, you could see there
14 are multiple chambers. And then you could
15 see from the same page, 0094, you could
16 see these four pictures are for the black
17 rat. And the next page, you can only see
18 white. So these are separate testing
19 chambers for the mice. So they are
20 testing different chambers.

21 Q. What was the species of rats
22 used in this experiment?

23 A. I don't know the species.

24 Depends on the season, what we can get.

25 Q. Is it helpful to know this was

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1 A. I'm sorry?
2 Q. Mr. Li, Mr. Li had access to the
3 premises?

4 A. Yes.

5 Q. Referring to Exhibit 18, this
6 was a test of rats and mice, correct?

7 A. Yes. They have separate reports
8 for other pests.

9 Q. Were the rats and mice tested
10 together?

11 A. Different chambers. The rats
12 eat mice.

13 Q. So one of them was in chamber A,
14 one of them was in chamber B?

15 A. I'm sorry, they all say chamber
16 one and chamber B, because chamber one
17 they are connected with a curve tunnel,
18 but they are in different chambers.

19 Q. I am just trying to understand.
20 So let's say the rats might have been in
21 chamber A and the mice might have been in
22 chamber B --

23 A. No.

24 Q. -- and they were connected with
25 the tunnel?

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1 conducted in May?

2 A. No. Actually, it was conducted
3 in April.

4 Q. Excuse me.

5 A. Testing from April 7th to
6 April 18th.

7 Q. Okay.

8 A. And they issue a report in May.

9 Q. Do you know what species of rats
10 were used?

11 A. No, I don't.

12 Q. Can you please turn to page 91?

13 A. (Complying.) Yes.

14 Q. Now, to be clear, this page
15 depicts observations of the quantity of
16 rats in chamber A and chamber B throughout
17 the test, correct?

18 A. Correct.

19 Q. This test ran seven days with
20 two days of preliminary testing and two
21 days of post testing, correct?

22 A. Total eleven days, correct.

23 Q. Right, total of eleven days,
24 thank you.

25 And at the outset of this

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1 experiment, the rats were divided 50/50?
 2 A. Yes.
 3 Q. Right, between the two chambers?
 4 A. Correct.
 5 Q. And then how much time passed
 6 between when the experiment was set up and
 7 10:30 a.m. on April 8th?
 8 A. Sorry, can you rephrase the
 9 question again?
 10 Q. Sure. How much time passed in
 11 between when this experiment was set up
 12 and 10:30 a.m. on April 8th?
 13 A. You mean how -- when did we set
 14 up the thing until they actually began the
 15 testing on April 8th?
 16 Q. Well, so April 8th, there are
 17 some figures here where they observed,
 18 right, the amount of rats in each chamber
 19 and the amount of food that was consumed
 20 in each chamber, right?
 21 A. Yes.
 22 Q. So how much time passed in
 23 between when the rats were placed in the
 24 chamber, and when this first reading was
 25 taken?

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1 why that might have happened?
 2 A. No. April 8th and April 9th,
 3 the ultrasonic pest repeller was not
 4 turned on, so they are just roaming freely
 5 into chamber A and chamber B for no
 6 reason.
 7 Q. So there is no explanation for
 8 why one chamber had doubled the amount?
 9 A. No. We put the same amount of
 10 the food in chamber A and chamber B, so
 11 that just -- there's no reason. They have
 12 no ultrasonic and we just record it.
 13 Q. Okay.
 14 A. Mm-hm.
 15 Q. So you would agree that the fact
 16 that there were seven more rats in chamber
 17 B on April 9th than there were on chamber
 18 A, nothing can be read into that, correct?
 19 A. Nothing, yeah.
 20 Q. And let me ask you something.
 21 What if we had started with a hundred rats
 22 or two hundred? Let's say we started with
 23 two hundred rats. And at this point,
 24 there were also twice as many in chamber B
 25 than there were in chamber A.

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1 A. I -- I assume either the day
 2 before or a couple hours -- any way -- no.
 3 Because normally we put the mice and rat
 4 inside when they are there, so I don't
 5 know what time do they arrive on the day.
 6 Q. Okay.
 7 A. Yes.
 8 Q. So you are not sure how much
 9 time passed?
 10 A. I'm not sure, but we did it with
 11 the supervision of the technician.
 12 Q. So we are not sure how much time
 13 passed but in between the time it was set
 14 up -- all right, so if there were -- it
 15 appears that there were, I guess, a total
 16 of twenty-four rats.
 17 A. Yeah.
 18 Q. Right? Then we see that -- we
 19 see that on April 8th, several of the rats
 20 moved from chamber A to chamber B and then
 21 April 9th, even more rats moved such that
 22 there were twice as many rats in chamber B
 23 as there were in chamber A, right?
 24 A. Right, yes.
 25 Q. Do you have any understanding of

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1 Would that have suggested
 2 anything to you?
 3 MR. WING: Object to form.
 4 A. No. No, I think it's just the
 5 nature of the activity of the pest.
 6 Q. Where they can roam freely and
 7 where they end up might be a matter of
 8 coincidence?
 9 A. Yes.
 10 Q. How would you be able to
 11 establish that the movement of a rat was
 12 not due to coincidence or roaming freely?
 13 Would there be a certain number of rats
 14 you would need? Would there be a certain
 15 amount of repetitions? What would you
 16 need to show that it was not a coincidence
 17 that rats moved from one chamber to
 18 another?
 19 MR. WING: Object to form.
 20 A. I'm sorry, I don't know how to
 21 answer the question.
 22 Q. Sure. So I believe you
 23 testified that the fact that many rats
 24 moved from chamber A to chamber B before
 25 the devices were on, that was a matter of

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1 coincidence, right?
 2 A. Yes.
 3 Q. So we have established that rats
 4 can move from chamber to chamber --
 5 A. Yes.
 6 Q. -- by their own fruition, right?
 7 A. Correct.
 8 Q. So how can we -- if we are
 9 looking at an experiment that tracks the
 10 movement of rats, how can we establish
 11 that their movement was due to anything
 12 but coincidence?
 13 MR. WING: Object to form.
 14 A. Because we have -- we run so
 15 many tests all through the years and we
 16 make sure both chambers have equal
 17 condition, equal size, equal food and
 18 water. And you see, it's varying, you
 19 know, it's varying every test the number
 20 of the rats and mice or the other pests in
 21 the chambers. So you could see the
 22 result, it vary, you know, at the
 23 beginning, before the influence of the
 24 ultrasonic. So we can see the pest and
 25 that it moved for no reason, you know.

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1 Q. So if there had before -- let's
 2 say you had waited an extra day and there
 3 were zero rats in chamber A and twenty in
 4 chamber B, would you have been able to
 5 read into that?

6 MR. WING: Object to form.
 7 A. Even with that, I still believe
 8 that's just the nature of the pest.
 9 There's no -- any time there is no -- we
 10 make sure both chambers have the equal
 11 condition so they just move. They're
 12 pests. They just move for no reason.

13 Q. Would you agree one way to
 14 eliminate that element of coincidence
 15 would be to use a larger sample size?

16 MR. WING: Object to form.
 17 A. That I cannot answer. I don't
 18 know.

19 Q. Why can't you answer?
 20 A. You mean the bigger size of the
 21 pest number?

22 Q. Yes.

23 A. I assume the result would be the
 24 same. It's just -- they just move, you
 25 know. They -- because run so many test,

1 we don't see any particular reason
 2 before -- before we turned on the
 3 ultrasonic, because the number can be
 4 varied; can be more, can be less in
 5 chamber B.
 6 Q. So it appears that rats were
 7 added midway through this experiment; is
 8 that correct?
 9 A. Let me see. Yes.
 10 Q. Where had these new rats been
 11 prior to the time they were added?
 12 A. We were keeping them separately
 13 because we always know that -- we always
 14 knew that some pests might die during the
 15 course of the testing, so we always have
 16 extra pest stand by in case some pest die
 17 we have to add more.
 18 Q. They were stored someplace
 19 outside the chambers, outside the
 20 experiment?
 21 A. Outside the chamber, yes.
 22 Q. So they came in during the
 23 middle of the test; they had not been
 24 present for the pre conditioning period,
 25 correct?

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1 A. Correct, yes.
 2 Q. Where were they placed when they
 3 were added?
 4 A. I think it's a separate room in
 5 the building.
 6 Q. No, when they were added to the
 7 experiment, where in the device were they
 8 added? Were they put in chamber A? Were
 9 they put in chamber B? Were they put in
 10 the middle?

11 A. That, I don't know. I have
 12 to -- I think -- nobody was under the
 13 supervision of the lab technician.

14 Q. But -- okay, but --

15 A. I do not know --

16 Q. -- based on this, you don't know
 17 how --

18 A. I don't know, because I wasn't
 19 there. But, you know, with this
 20 laboratory, ethical and their independency
 21 is very important, so I'm sure we don't
 22 want do anything to -- to interfere with
 23 the test.

24 Q. Now, if you look at the amounts
 25 of food and water consumed in chamber A,

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1 there was food and water consumed even on
 2 days when zero rats were observed,
 3 correct? So for instance on day four and
 4 five?

5 A. Could be. They might come in,
 6 eat and leave.

7 Q. So would you agree that this
 8 shows that they did come into chamber A on
 9 those dates to eat food; they were just
 10 not observed at that time?

11 A. Right. Might be. Might be.
 12 But you see, on this particular test, one
 13 rat remain in chamber A. So maybe he eat
 14 that food. And you see the quantity is
 15 much less in the other chamber. I'm not
 16 sure that that particular rat ate that
 17 food or some other rat came in, but...

18 Q. I'm sorry, so you think it's
 19 possible that another animal could have
 20 come into the test from outside the test
 21 to eat it?

22 A. You mean from chamber B? They
 23 might come in and if they eat and they run
 24 fast and they go back --

25 Q. But it's clear they had to enter

1 A. The whole chamber, whole
 2 dimension is made clear acrylic, maybe
 3 about two inches thick.

4 Q. And if you could just briefly go
 5 to page 92 with the mic.

6 A. (Complying.) Yes.

7 Q. I don't want to belabor this
 8 point.

9 On April 9th, it looks like
 10 there were thirteen mice in chamber B and
 11 five in chamber A.

12 Do you think that was the result
 13 of a coincidence?

14 A. Yes.

15 Q. So disparate numbers could
 16 happen just because, right?

17 A. Yes.

18 Q. At no time during this
 19 experiment was the repeller placed in
 20 chamber B, correct?

21 A. No time.

22 Q. There was no separate experiment
 23 run with the repeller in chamber B, right?

24 A. No.

25 MR. KOPEL: Let's take a

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1 chamber A in order to get the food, right?
 2 A. They have the access to both.
 3 They are free to move during the whole
 4 testing.

5 Q. Do you know if the frequency of
 6 the device was tested during the course of
 7 this test?

8 A. Yes.

9 Q. Do you know if that is reflected
 10 anywhere in the document?

11 A. Some document, yes, mention the
 12 frequency. Some test reports don't
 13 mention. For this one, they do not
 14 mention.

15 Q. What was the floor of the
 16 chamber made of?

17 A. Clear acrylic. Very thick
 18 acrylic.

19 Q. Why was that selected?

20 A. Number one, it's durable.
 21 Number two, we need to see through the
 22 chamber to see the post activity.

23 Q. And it was acrylic, the floor
 24 was acrylic for all the tests, to your
 25 knowledge?

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1 quick break, please.
 2 THE VIDEOGRAPHER: We are now
 3 going off the record at,
 4 approximately, 2:34 p.m.
 5 (Whereupon, a recess was
 6 taken at this time.)

7 THE VIDEOGRAPHER: This is
 8 the beginning of file number four. We
 9 are going back on the record,
 10 approximately, 2:49 p.m.

11 BY MR. KOPEL:

12 Q. Ms. Feuerstein, I think you said
 13 all the chambers on all of the tests run
 14 were made of acrylic; is that correct?

15 A. Yes.

16 Q. Was there furniture in any of
 17 the tests run?

18 A. Sorry?

19 Q. Was there furniture in the
 20 chambers in any of the tests run?

21 A. No, no.

22 Q. And there wasn't any carpeting
 23 or anything of that sort in the tests,
 24 right?

25 A. No.

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